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Supreme Court, U.S.
FILED

No. 021754 MAY 23 2003

In The
Supreme Court of the United States

LUCINDA LANGDON BATTEN;
BRITTANY ROSE LANGDON, a minor, by and through her guardian ad litem, Cynthia A. Singletary,

Petitioners,

v.

STEVEN GOMEZ, in his official and individual capacities as a Senior Investigator for the District Attorney of Riverside County, California;
SANDRA SHUSTER, in her official and individual capacities as a Senior Investigator for the District Attorney of Riverside County, California,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether the Court of Appeals erred in upholding the District Court's grant of qualified immunity to California law enforcement officers where the evidence establishes a patent Fourteenth Amendment violation of the Petitioner parent's due process liberty interest on the basis of Respondents' unreasonable seizure of the parent's minor daughter in North Carolina, without any process in North Carolina, without jurisdiction and without any order form any competent court in North Carolina?

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Lucinda Langdon Batten and Brittany Rose Langdon, a minor, by and through her guardian ad litem, Cynthia A. Singletary, respectfully pray this Court grant a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in the above-entitled proceeding on February 24, 2003.

OPINIONS BELOW

The February 24, 2003, panel opinion of the United States Court of Appeals for the Fourth Circuit, reported at 324 F.3d 288 (4th Cir. 2003), is reprinted at App. 1a.

The order granting Summary Judgment in this case was entered on December 21, 2001, and it along with the judgment, entered on the same date, in the Eastern District of North Carolina, are reprinted at App. 16a and 37a.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit in this action issued on February 24, 2003. The jurisdiction of this Court to review the judgment of that court is invoked under 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution as well as 42 U.S.C. §1983. The provisions of both the Amendment and Statute are set out in the Appendix hereto, App.61a and App. 39a, respectively.

STATEMENT OF THE CASE

A. THE FACTS

Petitioners initiated this Complaint, filed September 7, 1999, and amended December 3, 1999, alleging multiple civil rights claims, pursuant to 42 U.S.C. §1983, predicated on violations of the Petitioners' federal constitutional rights under the Fourth Amendment, incorporated through the Fourteenth Amendment, and the Fourteenth Amendment, as well as a series of state law causes of action sounding in tort, filed pursuant to North Carolina law. Specifically, Lucinda Batten alleged she and her daughter were subjected to an unlawful seizure, false imprisonment, false arrest, and deprivation of due process of law by a series of events that occurred in January and February of 1997. Named as Defendants were Lee Guy, Larry Guyton and Steven Lesane, law enforcement officers with the Bladen County, North Carolina Sheriff's Department, and Steven Gomez and Sandra Shuster, senior investigators for the Office of the District Attorney of Riverside County, California, as well as the Sheriff of Bladen County's surety.

On July 10, 1990, Brittany Langdon was born to the unwed union of Plaintiff Batten and Timothy Soulis in California. App. at 70a, para.18[1]. Several months later and after being repeatedly assaulted, beaten and threatened by Soulis, Batten took her daughter, Langdon, left the state of California and returned to Batten's home state, North Carolina. Id. at para. 19. On November 30, 1990, Soulis filed an Order to Show Cause for child custody and visitation in the Family Law Court in Riverside County, California. Soulis' request for temporary custody was denied. Id. at para. 20. Batten was never served with service of process in the California proceeding and no order granting Soulis custody of Langdon occurred prior to the critical events of January 24, 1997. App. 71a, para. 21.

Subsequent to Soulis being denied custody in 1990, a felony complaint issued from the Riverside County, California Municipal Court, charging Batten with child abduction in violation of the California Penal Code in July 1991. Id. at para. 22. An order was entered directing the District Attorney of Riverside County to locate Batten and Langdon and return them to the jurisdiction of the Court. (4604 Order) Id. at para. 23. Batten was unaware of any proceeding in California while living in North Carolina. Id. at para. 24.

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[1] Where the facts are not in dispute, this Petition cites to Plaintiffs' verified First Amended Complaint which, under Fed. R. Civ. P. 56(c), constitutes an evidentiary pleading in this case. Williams v. Griffin, 952 F.2d 820, 823 (4th Cir. 1991).

In June 1995, Batten filed a petition to terminate the parental rights of Timothy Soulis in Bladen County, North Carolina. Attempts to serve Soulis with process by registered mail were unsuccessful. Id. at para. 25.

Unrelated to the domestic and custody issues existing between Plaintiffs and Soulis, on January 4, 1997, in Bladen County, North Carolina, Batten discovered a man named Donnie Guy, peeking into a window of her residence as she was changing clothes. App. 72a, para. 26. She immediately obtained a criminal summons charging Guy with the violation of N.C. Gen. §14-202 (secretly peeping into a room occupied by a female person). Id. at para. 27. Trial was scheduled for January 27, 1997 in the District Court of Bladen County. Id. Donnie Guy is the brother of Defendant Guy in this civil action.

Once the criminal charge was filed against Donnie Guy, Defendant Guy set out to deter Batten from being present and available to give testimony in the prosecution of his brother. He ran a criminal records check on Plaintiff Batten and sometime between January 4 and January 20, 1997, determined the existence of the 1991 California warrant against Batten. He then contacted Defendant Shuster in California. He arranged for investigators from the District Attorney's Office to come to Bladen County, North Carolina, seize and arrest Batten, as well as seize custody of her daughter, Langdon, and take them both back to California.

On January 24, 1997, Batten was at her place of employment when Defendants Guyton and Gomez entered and asked to see her. App. 73a, para. 31. Batten was told by Guyton and Gomez that she was being taken into Gomez' custody on a California "kidnaping" charge as a result of a criminal complaint filed by Soulis. Id. at para. 32. According to Batten, Guyton informed her she was to listen to Gomez and do everything he required her to do. Id. Guyton and Gomez also informed Batten that Langdon was being seized from her school simultaneously and would be placed in Soulis' custody in California. Id. at para. 33. Plaintiff became extremely hysterical and distraught. At that time, Gomez told Batten she could either return with him to California with her daughter or remain in prison in Bladen County until she could be transferred to California. No order, civil or criminal, from any North Carolina Court was ever sought by any of the defendants in this case with regard to any aspect of the seizure of Batten and Langdon. Id. at para. 34.

In deposition, Gomez corroborates most of Batten's version of the workplace encounter. He stated Batten was told it was his intention to remove Langdon to California and that if Batten did not accompany them to California, Batten would be held in custody pending extradition proceedings. He further stated that even if Batten had not agreed to go back to California, he and Shuster would still have taken the child back to California that day. Gomez further testified that although his purpose in meeting Batten at her workplace was to enforce the California warrant, he was and is still not aware of any court document filed in North Carolina for recognition and enforcement of the California 4604 Order, did not have any discussion with any District or Superior Court judge concerning the removal of Langdon or the extradition of Batten, was not sure if local authorities were ever contacted for that purpose (although he assumed Shuster did so) and he had no conversation with any sheriff, district attorney or other North Carolina official regarding enforcement of the California Order at any time.

Given Gomez' ultimatum, Batten reluctantly agreed to accompany him, but her consent was not voluntary, instead resulting from coercion and fear brought about by her belief that if she did accompany the officer, she might never see her child again. She never signed nor saw any extradition papers or waivers.

At the same time Guyton and Gomez were coercing the Plaintiff into returning to California, Plaintiff Langdon was at Bladen Lakes Elementary School. Defendants Shuster and Lesane entered her school and told the Principal they were there to remove Langdon from school pursuant to instructions from the District Attorney's office in Riverside, California. App. 75a, para. 42. Although Shuster does not recall the Principal asking for valid documentation or a copy of the order, she admits she showed the Principal a certified copy of the California Order. Lesane and Shuster then seized Langdon, removed her from the school, transferred her to the Fayetteville Regional Airport and, subsequently, to California along with Batten.

Shuster testified, in deposition, that her sole form of authority for all her actions was the California

4604 Order. She confirmed no North Carolina process was initiated and no petition occurred in the North Carolina courts. The purpose of the California Defendants was to arrest or otherwise ensure Batten's return to California as well as that of Langdon. She had no information nor any indication Langdon was ever abused, neglected or in any type of danger from Batten.

In California, Batten was taken before a magistrate, released on her own recognizance and placed in a hotel room. App. 76a, para. 45. From her hotel room, Batten contacted her North Carolina counsel, Goldston Womble, explained her circumstances to him and requested he intercede in the District Court of Bladen County on January 27, 1997, to obtain a continuance of her scheduled trial against Donnie Guy until she could return to North Carolina. Counsel did so, speaking with the Assistant District Attorney, explaining Batten's situation and requesting the continuance. The Assistant District Attorney refused to continue the case or request a continuance from the Court; instead, he promptly voluntarily dismissed the criminal proceedings against Donnie Guy. App. 77a, para. 48.

Meanwhile, in California, Langdon's temporary custody was awarded to the Riverside County Department of Social Services on January 24, 1997, and thereafter, in an ex parte proceeding on January 27, 1997, it was given to Timothy Soulis, who promptly removed the child from California to parts unknown. Id. at para. 52. Thus, what Batten feared would occur happened.

Subsequently, a custody hearing was scheduled for February 18, 1997, in Riverside County, California. From January 27 until February 19, 1997, Batten had no contact, other than telephonic, with her daughter and did not know where Soulis had taken her. Batten was forced to remain in California to continue to fight for custody of her daughter, which finally occurred on February 18, 1997, when the Riverside County Court determined North Carolina was the proper jurisdiction to decide the question of custody and returned Langdon's custody to Batten. Soulis physically surrendered Langdon to Batten and when the two Petitioners returned to North Carolina, custody proceedings were initiated in Bladen County, which ultimately awarded final custody of Langdon to Batten. App. 78a-79a, para 57. All criminal charges against Batten were dismissed on May 12, 1997, by the District Attorney of Riverside County, California's office. App. 79a, para. 59. This lawsuit ensued.

B. PROCEEDINGS IN THE COURTS BELOW

On September 7, 1999, Petitioners filed the present complaint, and amended compliant on December 3, 1999, in the United States District Court for the Eastern District of North Carolina, alleging Fourth Amendment and Fourteenth Amendment violations under 42 U.S.C. §1983 and supplementary state-law claims. Named as defendants were the three North Carolina Law enforcement officers and the two California respondents.

With regard to the California respondents, the District Court denied Respondents' Motion to Dismiss on ground of absolute and qualified immunity on May 15, 2000. Following further preliminary motions, discovery and mediation, the North Carolina defendants settled their claims with plaintiff for $75,000.

At the conclusion of discovery, Respondents then filed a Motion for Summary Judgment, alleging their actions were cloaked with, alternatively, California Govermental Immunity, prosecutorial immunity, judicial immunity or qualified immunity. On December 21, 2001, the District Court granted Respondents' Motion for Summary Judgment, holding Respondents were entitled to qualified immunity on petitioners' §1983 claims. The District Court declined to exercise supplemental jurisdiction over the state law claims and dismissed them without prejudice. App. at 16a-36a.

Petitioners timely appealed to the United States Court of Appeals for the Fourth Circuit, which in a published panel opinion, 324 F.3d 288, affirmed the District Court's judgment. Specifically, and at issue in this Petition for Writ of Certiorari, the court found that "[i]ndisputably, the seizure of Brittany constitutes an interference with Batten's liberty interest and thus triggers the procedural protections of the Due Process Clause of the Fourteenth Amendment." App. at 12a. The court went on to find that, at a minimum, absent exigent circumstances, due process requires "pre-enforcement notice and some opportunity to object before law enforcement officials may separate a parent from her child pursuant to an out-of-state order." Id. at 13a, quoting Morrell v. Mock, 270 F.3d 1090, 1097-1100 (7th Cir. 2001), cert. denied, __ U.S. __, 123 S. Ct. 71 (2002). The court further found, Respondents did not contend nor were there any exigent circumstances that justified Brittany's seizure without notice and a hearing. Id. at 13a and 14a. Accordingly, the Fourth Circuit held "Batten has stated a claim for a deprivation, without due process, of her liberty interest in not being separated from Brittany without prior notice to her in North Carolina and without exigent circumstances." Id. at 14a.

Notwithstanding that finding of constitutional deprivation, the Fourth Circuit held it was unclear to reasonable officials in Respondents' position that enforcing the out-of-state order without prior notice or an opportunity to be heard in North Carolina was unconstitutional. Id. The court so held solely because it was "unable to find any authoritative cases [aside from Morrell] considering analogous circumstances that hold that pre-deprivation notice and an opportunity to be heard is required as matter of constitutional due process before a state may enforce another state's order directing that a child be brought before the out-of-state court." Id. at 15a, (emphasis added). Thus, the Court of Appeals affirmed the District Court's grant of qualified immunity. This Petition for Writ of Certiorari ensued.

REASON FOR GRANTING THE WRIT

I. The Fourth Circuit's holding that an analogous case must exist for §1983 liability to attach where obvious constitutionally wrongful conduct occurred directly conflicts with this Court's decision in Hope v. Pelzer, __ U.S. __ 122 S. Ct. 2508 (2002).

Government officials are protected by qualified immunity "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." Anderson v. Creighton, 483 U.S. 635, 638 (1985). A test of qualified immunity for official suit under 42 U.S.C. §1983 is whether, in performing discretionary functions, they have engaged in conduct that violates "clearly established statutory or constitutional rights for which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. at 818.

Immunity can, therefore, be established either on the basis the right violated was not, at the time, "clearly established" or, even though the right was established and violated, it was one that a "reasonable person in defendants' position could have failed to appreciate would be violated by his conduct." Mitchell v. Forsyth, 472 U.S. 511, 535 (1985).

Ruling on a defense of qualified immunity thus requires three separate determinations:

1. Identification of the specific right allegedly violated;

2. Whether at the time of the alleged violation, the right was clearly established; and

3. If so, whether a reasonable person in defendant's position would have known that doing what he did would violate that right.

Taylor v. Waters, 81 F.3d 429, 433 (4th Cir. 1996); Rowland v. Perry, 41 F.3d 167 (4th Cir. 1994).

The question presented in this Petition focuses on whether the right at issue was "clearly established".

In Anderson, supra, this Court explained that "clearly established", for purposes of qualified immunity, means "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent." Id. at 640. See also United States v. Lanier, 520 U.S. 259, 270 (1997).

This Court has recently provided further guidance to lower federal courts in conducting the "clearly established" determination. In Wilson v. Layne, 526 U.S. 603, the Court, in reversing the Fourth

Circuit, concluded that general Fourth Amendment principles did not apply with obvious clarity to the officers' conduct in that case. Id. at 616. In so holding, the Court found "[p]etitioners [had] not bought to [the Court's] attention any cases of controlling authority in their jurisdiction at the time of the incident which clearly established the rule on which they [sought] to rely, nor [had] they identified a consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful."

Following shortly thereafter, and with more defined explication, this Court last year held in Hope v. Pelzer, __ U.S. __, 122 S. Ct 2508 (2002), that an inmate was subjected to cruel and unusual punishment in violation of the Eighth Amendment when prison guards hand-cuffed him to a hitching post for disruptive behavior, despite his already having been subdued. In so holding, the Court stated, for purposes of qualified immunity, officials can still be on notice that their conduct violates established law even in novel factual circumstances. Id. at 2515-16. The critical question is not whether a case directly on point exists or whether a case with materially similar facts has occurred, but "whether the state of the law in [the year at issue] gave respondents fair warning that their alleged treatment of [petitioners] was unconstitutional." Id. at 2516.

Despite this Court's recent and clear pronouncement to the contrary, the Fourth Circuit in the case sub judice conducted its analysis of the "clearly established" determination using the same flawed approach of the Eleventh Circuit in Hope v.

Pelzer, supra, by requiring the existence of an authoritative case from "analogous" circumstances.

In the case at bar, the uncontradicted evidence establishes California officers, without jurisdiction, without North Carolina judicial process and with no notice or opportunity to be heard, seized Langdon at her school, removed her from her mother's custody and transported she and her mother to California without the voluntary consent of either party. In so doing, as the Fourth Circuit held, Respondents deprived Petitioners of their liberty interest without due process of law. This holding, and its obvious lineage, stem from multiple decisions of the Court clearly holding that a mother's liberty interest in the companionship, care, custody and control of her child is patently protected by the Due Process Clause of the Fourteenth Amendment. See, e.g., Lassiter v. Department of Social Services, 452 U.S. 18, 27 (1981). Indeed, a myriad of lower federal courts have recognized the private, fundamental liberty interest involved in retaining the custody of one's child and have held the integrity of one's family is of the greatest constitutional importance. Weller v. Department of Social Services for Baltimore, 901 F.2d 387 (4th Cir. 1990); Hurlman v. Rice, 927 F.2d 74, 79-80 (2nd Cir. 1991)(absent exigent circumstances, due process requires a hearing before state officials may remove a child from his home); Ellis v. Hamilton, 669 F.2d 510, 512 (7th Cir. 1982); Garranone v. Romo, 94 F.3d 1446, 1450 (10th Cir. 1996)(a parent's maintenance of the custody of their child "undeniably warrants deference and, absent a powerful countervailing interest, protection").

No question exists that pre-existing law clearly required the California Respondents to provide Petitioner Batten with notice and a hearing before they interfered with her custodial rights. See Santosky v. Kramer, 455 U.S. 745, 770 (1982); Lassiter v. Department of Social Services, supra. If the Fourteenth Amendment in the family relationship context means anything, it certainly guarantees parents will not be separated from their children without due process of law except in emergencies. Mabe v. San Bernadino, Department of Public Social Services, 237 F.3d 1101 (9th Cir. 2001). And, the same considerations underlying the recognition of a parent's due process right to pre-deprivation notice and hearing fully and equally justify the requirement that hearing take place in the enforcing state. To hold otherwise would countenance the not insubstantial risk that once physical custody is erroneously transferred, it may never be regained.

In the case at bar, nothing in the 1991 California warrant or in California or North Carolina law has ever been cited by Respondent, nor for that matter by the trial or appellate courts, which would have suggested to any reasonable law enforcement officer they possessed the ability to come into a foreign state, seize the person named in the out-of-state warrant, and then, without any order from any court in the resident state, seize the accused's minor child, transport both of them back to the foreign state, ultimately removing the child from the accused's custody. No assertion, let alone evidence, existed here of exigent danger to Langdon. Time to let the North Carolina judicial process for the return of Batten and Langdon run its course was easily available to everyone. Unfortunately, the process was never given a chance.

No provision of the Uniform Child Custody Jurisdiction Act (hereinafter "UCCJA"), in effect in California and North Carolina in 1997, allowed for such action. Indeed, although the courts of North Carolina could decline jurisdiction once informed of the existence of the California order, a condition precedent to the court declining jurisdiction is the requirement the matter be brought to the North Carolina courts' attention. As a general rule, before making a decree under the UCCJA, N.C. Gen. Stat. §50A provided for "reasonable notice an opportunity to be heard" by any parent who had physical custody of a child. No notice or hearing ever occurred in this case consistent with the UCCJA.

As a result of this decision in the Fourth Circuit, litigants in novel cases may never succeed on §1983 claims despite this Court's direct holding to the contrary in Hope v. Pelzer, supra. The error made in this case requires a qualified immunity search so narrowed and balkanized that it ultimately confounds common sense. Indeed, the Fourth Circuit's opinion creates the perverse possibility (indeed likelihood) the more egregious and unthinkable the constitutional violation, the more likely the governmental actor is to escape liability. Harlow and it progeny were never intended for protection of such clearly and objectively wrongful conduct as occurred in this case. For liability to attach under §1983, an official does not have to be told so explicitly that which he can not so clearly do.

Respondents in the circumstances of the case at bar should not be shielded from liability due to the fact a dearth of case law exists on all fours because few have ever attempted such egregious and unconstitutional misconduct. "[T]he absence of [many] reported case[s] with similar facts demonstrates nothing more than wide-spread compliance with well recognized constitutional principles." Everhardt v. O'Malley, 17 F.3d 1023, 1028 (7th Cir. 1994). See also Robles v. Prince George's County, Maryland, 308 F.3d 437, 445 (4th Cir. 2002) (Luttig, J., dissenting from denial of rehearing en banc)("...I do not believe that a decided case is necessary in order to officers to be on fair notice that conduct like that by the officers here is violative of the constitution.... The sheer danger, not even to mention the constitutional irresponsibility, of such conduct is manifest as a simple matter of common sense").

For all of the reasons stated above, the Fourth Circuit's requirement that a decided case exist in order for Respondents to have been on fair notice that their conduct violated due process of law is in direct conflict with this Court's holdings in Hope v. Pelzer, supra; Wilson v. Layne, supra; United States v. Lanier, supra; and Anderson v. Creighton, supra. The judgment of the Fourth Circuit must, therefore, be reversed.

CONCLUSION

The issues presented in this case merit consideration by this Court. No collateral issues exist which will complicate the Court's treatment of the case and lengthen the proceedings. The issue is of fundamental importance to civil rights claimants, determinations of qualified immunity and §1983 litigation. Accordingly, Petitioners respectfully request a Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit issue to review the decision below.

Respectfully submitted, this the 23rd day of May, 2003.

BEAVER, HOLT, STERNLICHT,
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PUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 02-1087

LUCINDA LANGDON BATTEN;
BRITTANY ROSE LANGDON, a minor, by and through her guardian ad litem, Cynthia A. Singletary,
Plaintiffs-Appellants,

v.

STEVEN GOMEZ, in his official and individual capacities as a Senior Investigator for the District Attorney of Riverside County, California;
SANDRA SHUSTER, in her official and individual capacities as Senior Investigator for the District Attorney of Riverside County, California,
Defendants-Appellees,

and

LEE GUY, in his official and individual capacities as Deputy Sheriff of Bladen County, North Carolina;
LARRY GUYTON, in his official and individual capacities as an Investigator for the Sheriff's Department in Bladen County, North Carolina;
STEVE LESANE, in his official and individual capacities as Deputy Sheriff of Bladen County, North Carolina;
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA;
THE INSURANCE COMPANY OF NORTH AMERICA,
Defendants.

Appeal from the United States District Court for the
Eastern District of North Carolina, at Wilmington.
James C. Fox, Senior District Judge
(CA-99-198-7-F)

Argued: December 6, 2002
Decided: February 24, 2003
Entered: February 24, 2003

Before LUTTIG and TRAXLER, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Affirmed by published opinion. Judge Hamilton wrote the opinion, in which Judge Luttig and Judge Traxler joined.

COUNSEL

ARGUED: Richard Brooks Glazier, BEAVER, HOLT, STERN-LICHT, GLAZIER, CARLIN, BRITTON & COURIE, P.A., Fayetteville, North Carolina, for Appellants. Andrew John Hanley, CROSSLEY, MCINTOSH, PRIOR & COLLIER, Wilmington, North Carolina, for Appellees. **ON BRIEF:** H. Gerald Beaver, BEAVER, HOLT, STERNLICHT, GLAZIER, CARLIN, BRITTON & COURIE, P.A., Fayetteville, North Carolina, for Appellants.

OPINION

HAMILTON, Senior Circuit Judge:

On September 7, 1999, the plaintiffs, Lucinda Langdon Batten (Batten) and her daughter, Brittany Rose Langdon (Brittany), by and through her guardian *ad litem* (Cynthia Singletary), brought this action against three deputies with the Bladen County, North Carolina Sheriff's Department (Lee Guy, Larry Guyton, and Steven Lesane) and two investigators with the Office of the District Attorney of Riverside County, California (Sandra Shuster and Steven Gomez). In their complaint, the plaintiffs alleged multiple civil rights claims pursuant to 42 U.S.C. § 1983, as well as a series of North Carolina state law claims. After the plaintiffs settled their claims with the North Carolina defendants, Shuster and Gomez, pursuant to Federal Rule of Civil Procedure 56, moved for summary judgment alleging, *inter alia,* that they were immune from suit under the doctrine of qualified immunity. On December 21, 2001, the district court granted Shuster and Gomez's motion for summary judgment, holding that Shuster and Gomez were entitled to qualified immunity on the plaintiffs' § 1983 claims. In its order, the district court declined to exercise supplemental jurisdiction over the state law claims and dismissed them without prejudice. The plaintiffs appeal, and we now affirm.

I

Batten was born and raised in Bladen County, North Carolina. In the mid-1980s, she moved to Florida with her second husband, Michael Batten, who fathered her child, Joanna, in 1987. Michael Batten allegedly beat and abused Batten and, in 1988, she moved to South Carolina with Joanna. At some point while living in South Carolina, Batten began to date Timothy Soulis (Soulis), Brittany's father.

Soulis abducted Batten at gun point in 1989 and, thereafter, they (without Joanna) began a one to two-year journey through Canada and Arizona that ended in California near some of Soulis's relatives. Although Soulis often held a job and worked away from the various apartments in which they were staying, Batten was afraid to escape or call the police or her relatives because she thought Soulis was acting on behalf of Michael Batten to deprive her of the custody and the companionship of Joanna. During this time, Michael Batten filed a custody proceeding in Florida and was granted sole custody of Joanna.

Brittany was born to Batten and Soulis on July 10, 1990 in a hospital in Orange County, California, while they were living in Riverside County, California. Soulis was acknowledged on the birth certificate as Brittany's father. In November 1990, Batten left with Brittany for Bladen County, North Carolina after a friend, Paul Smith (Smith), arranged to leave a ticket for her at the airport. Batten fled because Soulis allegedly beat and threatened her on numerous occasions.

Soulis promptly filed charges of child abduction against Batten and instituted civil proceedings to enforce his rights as a parent under California law. In July 1991, the Municipal Court of Riverside County issued a felony warrant for Batten's arrest for child abduction. On July 22, 1991, the Superior Court of Riverside County issued a California Family Code Section 4604 order (the 4604 Order) directing the District Attorney of Riverside County to "take all actions necessary to locate" Batten and Brittany and "to return" Brittany to the court's jurisdiction. (J.A. 552).[1]

After returning to Bladen County, North Carolina, Batten began to date and live with Smith. At some point in late 1996, Batten caught Deputy Lee Guy's brother, Donnie Guy, peeping in one of the windows of her home. Batten subsequently caught Donnie Guy peeping in her window a second time, called 911, and filed a criminal misdemeanor charge against him. Donnie Guy's trial on this misdemeanor charge was scheduled for January 27, 1997.

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[1] Section 4604 provides in relevant part:

> In any case where a petition to determine custody of a child has been filed in a court of competent jurisdiction, or where a temporary order pending determination of custody has been entered in accordance with Section 4600.1, and the whereabouts of a party in possession of the child are not known, or there is a reason to believe that such party may not appear although ordered to appear personally with the child pursuant to Section 5160, the district attorney shall take all actions necessary to locate such party and the child and to procure compliance with the order to appear with the child for the purposes of adjudication of custody.

Cal. Fam Code § 4604(a)

Thereafter, Deputy Lee Guy ran a criminal records search on Batten and discovered the outstanding California felony arrest warrant and the 4604 Order. Once he learned of the felony arrest warrant and the 4604 Order, Deputy Lee Guy called the Riverside County District Attorney's Office and notified the office that he had found Batten and made arrangements to coordinate the execution of the felony arrest warrant and 4604 Order.

Sandra Shuster (Shuster) and Steven Gomez (Gomez) are investigators with the District Attorney of Riverside County, California. After being contacted by Deputy Lee Guy in January 1997, Shuster confirmed with the California courts that the 4604 Order and felony arrest warrant were still in effect and made arrangements to go to North Carolina on January 23, 1997 to pick up Brittany. Prior to leaving for North Carolina, Shuster called the Riverside County Superior Court to ask for an immediate hearing once the court's 4604 Order was executed. The Riverside County Superior Court agreed to hold an immediate hearing after the 4604 Order was executed.

Prior to arriving in North Carolina, Shuster faxed the 4604 Order to Bladen County and upon arrival asked the Sheriff's Department if she needed to do anything in connection with the order such as filing a North Carolina action or having the order countersigned (domesticated) by a North Carolina judge. Shuster and Gomez followed a similar process in every out-of-state abduction case; they present the 4604 Order to local law enforcement and ask if there is anything else that needs to be done such as filing or domesticating the order. If they are informed that the 4604 Order needs to be domesticated, they will take the necessary steps to domesticate the order.

Shuster presented the paperwork to the Bladen County Sheriff's Department and asked if the paperwork was in order. The contact at the Bladen County Sheriff's Department, Deputy Larry Guyton (Deputy Guyton), reviewed the paperwork and allegedly showed it to the local District Attorney who informed him that the paperwork was in order and that they could seize the child. According to Deputy Guyton, the District Attorney informed him that the orders were valid in North Carolina and Deputy Guyton conveyed this information to Shuster and Gomez.[2]

Shuster, accompanied by Deputy Steven Lesane (Deputy Lesane), picked up Brittany at her school. Gomez, accompanied by Deputy Guyton, met Batten at her place of employment. Gomez and Deputy Guyton explained that they had an order to pick up her child and a warrant to arrest her for child abduction. She was offered a choice of facing extradition or waiving extradition and voluntarily returning with the

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[2] In his affidavit, the then District Attorney for Bladen County, Marion Warren (now Judge Warren), states that he has no recollection of the alleged meeting he had with Deputy Guyton and no recollection of seeing the 4604 Order.

California investigators and Brittany to court in California. Batten agreed to accompany the California investigators and Brittany to California. Batten was allowed to leave work and return home unaccompanied to pack some clothes for her and her daughter. Once at home, she contacted her attorney. Thereafter, she met Shuster, Gomez, and Brittany at the airport.

In California, Batten was taken before a magistrate, released on her own recognizance, and placed in a hotel room at state expense.[3] The plaintiffs concede that the Riverside County Superior Court held prompt hearings and awarded temporary custody of Brittany to Soulis.[4] Thereafter, Soulis took temporary custody of Brittany, but at the custody hearing on February 18, 1998, the Riverside County Superior Court held that North Carolina was the proper jurisdiction to decide the question of custody.

On September 7, 1999, the plaintiffs brought this § 1983 action against Deputy Lee Guy, Deputy Guyton, Deputy Lesane, Shuster, and Gomez. The plaintiffs alleged multiple civil rights claims pursuant to 42 U.S.C. § 1983, as well as a series of North Carolina state law claims.

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[3] As a result of her presence in California, the case against Donnie Guy was dismissed.

[4] On May 12, 1997, the child abduction charge against Batten was dismissed.

In May 2001, the North Carolina defendants settled their claims with the plaintiffs for $75,000. After the conclusion of discovery, Shuster and Gomez filed a motion for summary judgment, pursuant to Federal Rule of Civil Procedure 56, alleging, *inter alia*, that they were immune from suit under the doctrine of qualified immunity. On December 21, 2001, the district court granted Shuster and Gomez's motion with regard to the § 1983 claims In its order, the district court declined to exercise supplemental jurisdiction over the state law claims and dismissed them without prejudice. This appeal followed.

II

Entitlement to qualified immunity must be analyzed in two steps, which are to be "considered in proper sequence." *Saucier v. Katz*, 533 U.S. 194, 200 (2001). As a "threshold question," a court must ask whether, "[t]aken in the light most favorable to the party asserting the injury, . . . the facts alleged show [that] the officer's conduct violated a constitutional right." *Id.* at 201. If the answer is no, then the analysis ends; the plaintiff cannot prevail. *Id.* If the answer is yes, then "the next, sequential step is to ask whether the right was clearly established" at the time of the events at issue. *Id.* This determination must be made "in light of the specific context of the case, not as a broad general proposition." *Id.* If the right was not "clearly established" in the "specific context of the case"—that is, if it was not "clear to a reasonable officer" that the conduct in which he allegedly engaged "was unlawful in the situation he confronted"—then the law affords immunity from suit. *Id.* at 201-02. Accordingly, the answer to both *Saucier* questions must be in the affirmative in order for a plaintiff to defeat a defendant police officer's motion for summary judgment on qualified immunity grounds.

A

Batten claims that her constitutional rights were violated because Shuster and Gomez failed to comply with North Carolina's extradition laws before transporting her to California. More specifically, Batten complains that, before transporting her to California, she was not informed of her extradition rights and was not afforded an extradition hearing.

To state a 42 U.S.C. § 1983 claim for illegal extradition, an individual must show that the violation of the state's extradition laws "cause[d] the deprivation of rights protected by the Constitution and statutes of the United States." *Wirth v. Surles*, 562 F.2d 319, 322 (4th Cir. 1977) (arrest and transportation of alleged fugitive without extradition proceedings does not constitute defense to criminal prosecution but does create cause of action pursuant to § 1983). In this case, Batten's § 1983 illegal extradition claim fails for the simple reason that there was no violation of North Carolina's extradition laws.

The North Carolina Uniform Criminal Extradition Act (NCUCEA), N.C. Gen. Stat. §§ 15A-721-750, sets up a series of detailed procedures that must be followed by a state demanding the extradition of a person charged with a crime in the state demanding extradition. Under the NCUCEA, an extradition request must be made in writing to the Governor. *Id.* § 15A-723. The request must include a supporting affidavit charging the defendant with the crime and a copy of the charge must be attached to the request, *id.*, and, if the defendant has not been arrested, the Governor must sign an arrest warrant for the defendant, *id.* § 15A-727.[5] A defendant must be notified of her rights when arrested to contest extradition and must be informed of the nature of the charges against her and her right to counsel. *Id.* § 15A-730. The NCUCEA, however, permits a person who learns of criminal charges against her in another state to elect to travel voluntarily to that state to face the charges. *Id.* § 15A-746 ("[N]othing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this State.").

In this case, Batten was given an option, she could either voluntarily accompany Shuster and Gomez to California or she could be arrested by Bladen County and held in jail pending formal extradition. Batten, after privately conferring with her attorney, voluntarily accompanied Shuster and Gomez to

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[5] Under the NCUCEA, a North Carolina arrest warrant was not required to arrest Batten pursuant to the felony arrest warrant for child abduction. N.C. Gen. Stat. § 15A-734 ("The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment exceeding one year.").

California. Simply put, Batten knowingly and voluntarily chose to waive her extradition rights and go to California. Under such circumstances, we see no constitutional infirmity. *Cf. Pierson v. Grant*, 527 F.2d 161, 164-65 (8th Cir. 1975) (holding that waiver of extradition rights is voluntary as long as the alleged fugitive had a general knowledge and understanding of what was involved in the waiver when he signed it); *Morrison v. Stepanski*, 839 F. Supp. 1130, 1140 (M.D. Pa. 1993) (holding that waiver of extradition rights must be "knowing" in the sense that the alleged fugitive understands that he has certain rights under the law and affirmatively indicates an intention to relinquish those rights and "voluntary" in the sense that it was given with the alleged fugitive's free choice). Accordingly, the district court did not err when it granted summary judgment in favor of Shuster and Gomez on Batten's § 1983 illegal extradition claim.

B

Batten also claims that the seizure of Brittany deprived her of her liberty interest, protected by the Due Process Clause of the Fourteenth Amendment, in the companionship, care, custody, and control of her child.

Indisputably, the seizure of Brittany constitutes an interference with Batten's liberty interest and thus triggers the procedural protections of the Due Process Clause of the Fourteenth Amendment. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27 (1981); *Jordan by Jordan v. Jackson*, 15 F.3d 333, 342 (4th Cir. 1994). To meet the requirements of due process, the state must afford notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545, 552 (1965). Generally, absent exigent circumstances, due process requires a hearing before state officials may remove a child from her home. *Jordan by Jordan,* 15 F.3d at 343; *see also Morrell v. Mock,* 270 F.3d 1090, 1095 (7th Cir. 2001), *cert. denied,* 123 S. Ct. 71 (2002). Moreover, if exigent circumstances are present, there must be prompt "adequate post-deprivation process to ratify the emergency action." *Jordan by Jordan,* 15 F.3d at 343. Finally, due process requires "pre-enforcement notice and some opportunity to object before law enforcement officials may separate a parent from her child pursuant to an out-of-state" order. *Morrell,* 270 F.3d at 1097-1100 (holding that, after balancing the nature of each parent's liberty interest in their relationship with the child, the risk of harm from erroneous deprivations, and the government's interests in facilitating interstate recognition and enforcement of child custody decrees and in deterring the unilateral removal of children through the Uniform Child Custody Jurisdiction Act, due process requires "pre-enforcement notice and some opportunity to object before law enforcement officials may separate a parent from her child pursuant to an out-of-state default order transferring custody").

In this case, Shuster and Gomez do not contend, nor could they, that there were exigent circumstances that justified the seizure of Brittany without notice and a hearing. Furthermore, Shuster and Gomez concede that there was no pre-enforcement notice and no opportunity to object before Brittany's seizure pursuant to the 4604 order. Under these circumstances, we are satisfied that Batten has stated a claim for a deprivation, without due process, of her liberty interest in not being separated from Brittany without prior notice to her in North Carolina and without exigent circumstances.

We conclude, however, that Shuster and Gomez are entitled to qualified immunity on Batten's claim that the seizure of Brittany deprived Batten of her liberty interest, protected by the Due Process Clause of the Fourteenth Amendment, in the companionship, care, custody, and control of her child. In assessing whether the right at issue was clearly established at the time of the state official's actions, we focus upon "the right [not] at its most general or abstract level, but at the level of its application to the specific conduct being challenged." *Wiley v. Doory*, 14 F.3d 993, 995 (4th Cir. 1994) (citation and internal quotation marks omitted); *see also Anderson v. Creighton*, 483 U.S. 635, 640 (1987) ("The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."). This does not mean, however, that a state official will be protected by qualified immunity unless the very act in question has previously been held unlawful. *Anderson*, 483 U.S. at 640. Rather, the unlawfulness must be apparent in light of pre-existing law. *Id.*

The gist of Batten's argument is that it was clearly established that due process required notice and an opportunity to be heard before a state official could interfere with a mother's liberty interest in her child. The statement of the right at this level of generality, however, is of little help in determining the reasonableness of Shuster and Gomez's conduct. *Id.* at 639-40. As the court in *Morrell* explained, "[t]he appropriate question is whether it would be clear to reasonable officials in the defendants' position that enforcing the [out-of-state] order without prior notice or an opportunity to be heard in [the home state] was unconstitutional." 270 F.3d at 1100.

In this case, aside from *Morrell,* we have been unable to find any authoritative cases considering analogous circumstances that hold that pre-deprivation notice and an opportunity to be heard is required as a matter of constitutional due process before a state may enforce another state's order directing that a child be brought before the out-of-state court. Because *Morrell* was decided after Shuster and Gomez's actions in this case, Shuster and Gomez, like the defendants in *Morrell,* are immune from suit under the law of qualified immunity.[6]

III

For the reasons stated herein, the judgment of the district court is affirmed.

AFFIRMED

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[6] The plaintiffs contend that Brittany was unconstitutionally seized and transported to California in violation of her Fourth and Fourteenth Amendment rights. We have reviewed this claim and agree with the district court that Shuster and Gomez are entitled to qualified immunity on this claim because Shuster and Gomez violated no clearly established right held by Brittany.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:99-CV-198-Fi
Entered December 21, 2001

ORDER

LUCINDA LANGDON BATTEN; and
BRITTANY ROSE LANGDON, a minor by and
through her Guardian Ad Litem,
Cynthia A. Singletary,

Plaintiffs,

V.

LEE GUY, in his official and individual capacities as
Deputy Sheriff of Bladen County, North
Carolina; LARRY GUYTON, in his official and
individual capacities as an Investigator for the
Sheriff's Department of Bladen County, North
Carolina; STEVEN LESANE, in his official and
individual capacities as Deputy Sheriff of Bladen
County,
North Carolina;
STEVEN GOMEZ, in his official and individual
capacities as a Senior Investigator for the District
Attorney of Riverside County, California;
SANDRA SHUSTER, in her official and individual
capacities as Senior Investigator for the District
Attorney of Riverside County, California; and
NATIONAL UNION FIRE COMPANY OF
PITTSBURGH, P.A.,

Defendants.

This matter is before the court on defendant Gomez's and Shuster's Motion for Summary Judgment. This case has been dismissed with prejudice as to all other defendants.

FACTUAL PREDICATE

A recitation of all the lurid details (most of which now are irrelevant) is unnecessary to the disposition of the defendants' motion. This action arose from a dispute regarding the custody of the minor plaintiff, Brittany Pose Langdon ("Brittany"). In 1991, Brittany's mother, plaintiff Lucinda Langdon Batten ("Batten"), admittedly abducted Brittany without the knowledge or consent of Brittany's father from their home in California and brought Brittany to North Carolina. In 1997, a Bladen County, North Carolina sheriff's deputy became aware of an outstanding 1991 California felony complaint against Batten arising from Brittany's abduction in 1991. The Bladen County deputy sheriff contacted defendant Sandra Shuster, an investigator for the Office of the District Attorney of Riverside County, California, and advised her of Batten's and Brittany's location in North Carolina.

There also was pending in California an "Order to District Attorney re Locating and Returning Minor Child Pursuant to [California] Civil Code Sec. 4604" ["4604 order," also referred to as the "pick-up order"], filed July 22, 1991, in the Superior Court of Riverside County, California, which ordered: "The District Attorney of Riverside County and any other peace officer shall take all actions necessary to locate the respondent [Lucinda Batten] and the minor child [Brittany] named above and to return the child to the jurisdiction of the court." Defendants' Exhibit G. The operative language of the order tracks language of the statute. *See* CAL. CIVIL CODE § 4604. Shuster faxed the 4604 order to the Bladen County Sheriff's Department prior to leaving California.

On January 23, 1997, Investigator Shuster, accompanied by Investigator Gomez (collectively, "the California Investigators"), flew to North Carolina for the purpose of taking custody of Brittany and returning her to California as required by the 4604 order, and of having Batten arrested, if necessary, pursuant to the 1991 felony complaint. The next morning, they met with several Bladen County Sheriff's deputies to plan their mission. Investigator Shuster inquired of the sheriff's deputies whether she needed to take any additional measures in order to be in compliance with North Carolina law to execute the 4604 order. Investigators Shuster and Gomez testified during their respective depositions that they followed the same or similar course of action in all their out-of-state abduction cases; that is, they sought advice from local law enforcement officials whether they needed to file or domesticate the 4604 order. *See* Gomez Depo.

Tpp. 38-32[1]; Shuster Depo. Tpp. 28-36; *see also* Shuster Depo. Tpp. 109-11.

According to deposition testimony of former defendant, Deputy Sheriff Larry Guyton, when the California Investigators arrived, he "contacted our assistant district attorney, Marion Warren.... He's district court judge now."

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[1] In response to the question whether he ever had had an occasion in his official position to seek judicial enforcement of a 4604 order in another state, Gomez testified in pertinent part, "If I had a 4606 [sic] order for a child solely, I would have contacted the jurisdiction of wherever the child is and asked them what they require from us to serve that — or to honor our order. I would also even if I had a warrant for the parent involved, ask the local jurisdiction what they require. I've had cases where I've done — I've had to do both where we've had to file our own order within that jurisdiction. That's only had [sic] if I had a pick up order for a child. The pick up order being the 4604 order. Never had to do that in conjunction with an arrest warrant, though." Gomez Depo. Tp. 29. Gomez went on to clarify his understanding that, although he lacked "police officer powers outside the State of California" to make an arrest, the 4604 order gave him the power to seize a child outside of California. *Id.* at 30-31.

> This was after the investigators from California got here, When they arrived at the office, of course, introductions were made. Our Chief Deputy, Philip Little was there. They showed us the warrant. They showed us their court order. And I told the chief that I wasn't – you know, I understood the felony – the criminal matter, the felony warrant. I understood that process. I told him that I had not done a civil process. I wasn't familiar with that. And he said that he wasn't sure if he was familiar with it and that we should contact the D.A. 's office and let them advise us on it. That's what we did.

Guyton Depo. Tp. 40-41.

Guyton went on to explain that then-Assistant District Attorney Warren was already in their office on the day the California Investigators arrived, that Warren entered Guyton's office where both California Investigators and Chief Little were waiting, and that Guyton showed Warren the paperwork. "Showed him the paperwork they had. He looked over it. He said everything looked good to him. Asked him if there was anything else we needed to do. He said not to his knowledge." Guyton testified that he had explained to Warren "that we were proposing to take the child into custody. And the mother, we were going to ask the mother to voluntarily return with them to California.

Barring she chose not to do that voluntarily, then she would be arrested." Guyton Depo. Tp. 45.[2]

The plaintiffs have proffered the affidavit of Judge Warren in which he denies any memory of the events described by Guyton. and states. "I am certain that I never met with a local deputy and two officials from a district attorney's office in California.... Also I have reviewed my calendar for the relevant period and have determinate that on January 24, 1997, I was. . . in Whiteville, Columbus County, NC." Warren Affidavit at 2, Exhibit A to Plaintiffs' Response to Motion for Summary Judgment.

Nevertheless, on the morning of January 24, 1997, Investigator Gomez and one or more sheriff's deputies approached Batten at her workplace, showed her the 1991 California felony complaint, and advised her that Investigator Shuster was at Brittany's school contemporaneously taking Brittany into custody pursuant to the 4604 California court order. Batten was not arrested, not handcuffed and not advised she was not free to leave. In fact, Investigator Shuster testified at her deposition that she told Batten that if Batten would cooperate and accompany them voluntarily back to California, that they would not arrest her. The California investigators explained to Batten that they were executing the 4604 order and returning Brittany to California where plans already had been made for an immediate hearing. They explained that Batten was free to accompany them voluntarily, or that she could be arrested and could exercise her right to insist on extradition procedures. Batten elected the former course. The Investigators permitted Batten to return to her home to collect personal items for herself and Brittany for the trip to California. The California Investigators paid for Batten's and Brittany's airplane tickets.

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[2] Without citation to the record, Plaintiffs' counsel makes the statement in his Response to the defendants' motion for summary judgment that "neither California Defendant Gomez nor Shuster, remembers this conversation with Judge Warren occurring nor do they agree they were present for any such conversation." Response at 28. The court's examination of the record reveals that Gomez was asked only "did anyone contact the local authorities and ask them what they required regarding the custody order," to which he replied, "I don't have any independent knowledge of that. I don't know. I believe – I believe Sandy or Ms. Shuster took care of that that [sic] issue. I wasn't involved." Gomez Depo. Tp. 31; *see also id.* 44-45. Neither Gomez nor Shuster was asked during their depositions – or thereafter – anything about Marion Warren.

When they all reached California later that evening, Batten immediately was taken before a magistrate who released her on her own recognizance. Batten stayed in a motel room rented for her by the Riverside County, California authorities, and Brittany was placed in foster care until the matter could be sorted out. Although the California court initially awarded custody of Brittany to her father, Batten regained custody of Brittany shortly thereafter in a North Carolina proceeding. The California felony charge against Batten was dismissed in May 1997.

Two and a half years later, the plaintiffs sued all of the named defendants in the various capacities listed, contending that they violated plaintiffs' constitutional rights (primarily, their Fourth and Fourteenth Amendment rights against unreasonable seizure) and alleging pendant common law tort claims. The plaintiffs having resolved their claims against the North Carolina defendants; only California Investigators Shuster and Gomez remain as defendants. They have filed a Motion for Summary Judgment, advancing a qualified immunity defense and arguing that the plaintiffs cannot demonstrate the existence of a genuine issue of material fact necessitating a trial.

STANDARD OF REVIEW

Summary judgment is appropriate when there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247 (1986). Defendants bear the burden of initially coming forward and demonstrating the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett* 477 U.S. 317 (1986); *Ross v. Communications* Satellite *Corp.*. 759 F.2d 355, 364 (4th Cir. 1985).

When making the summary judgment determination, the court views facts and all reasonable inferences in the light most favorable to the nonmoving party. *See Anderson,* 477 U.S. at 255. Moving defendants can carry their burden either by presenting affirmative evidence, or by demonstrating that the plaintiff's evidence is insufficient to establish its claim. *See Celotex Corp.,* 477 U.S. at 331 (Brennan, J., dissenting). Once defendants have met their burden, the plaintiff then must affirmatively demonstrate that there is a genuine issue of material fact which requires trial. *See*

Matsushita Elec Indus. Co. Ltd v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). A district court must enter judgment against a party who, "after adequate time for discovery. . . fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp.*, 477 U.S. at 322; *Beard Plumbing and Heating, Inc. v. Thompson Plastics, Inc.* 152 F.3d 313, 315 (4th Cir. 1998). Where "there is no genuine issue as to any material fact and.. . the moving party is entitled to judgment as a matter of law," entry of summary judgment is mandated. Fed. R. Civ. P. 56(c); *Stone v. Liberty Mutual Ins. Co*, 105 F.3d 188, 190 (4th Cir. 1997). There is no issue for trial unless there is sufficient evidence favoring the plaintiff for a jury to return a verdict for it. *See Anderson*, 477 U.S. at 250.

The standard for summary judgment therefore mirrors the standard for judgment as a matter of law under Fed. R. Civ. P. 50(a); that is, a trial court must grant summary judgment if, under the governing law, there can be but one reasonable conclusion as to the verdict. *See Anderson*, 477 U.S. at 250. A trial judge faced with a summary judgment motion "must ask himself not whether he thinks the evidence unmistakenly favors one side or the other, but whether a fair- minded jury could return a verdict for the plaintiff on the evidence presented." *Id.* at 252. In opposing summary judgment. the non-moving party must "set forth such facts as would be admissible in evidence." Fed. R. Civ. P. 56(e). Inadmissible hearsay is not competent in opposing a motion for summary judgment. *See Greensboro Prof Fire Fighters Ass'n v. Greensboro*, 64 F.3d 962, 967 (4th Cir. 1995).

In order to shield public officials from the burdens both of litigations as well as liability, establishment of qualified immunity is encouraged at the summary judgment stage. *See Pritchett v. Alford,* 973 F.2d 307, 313 (4th Cir. 1992). However, summary judgment still is appropriate "only if (1) there are no genuine issues of material fact, and (2) on the undisputed facts the defendant as movant is entitled to judgment as a matter of law." *Id.* In this case and upon this motion, the court must consider whether a reasonable officer would have known that his conduct violated a specific right if there are no genuine issues of fact with respect to the official's conduct under the circumstances. If issues of material fact do exist, then summary judgment is inappropriate and those issues must be reserved for trial. *See id.*

ANALYSIS

It is important to point out from the outset that the plaintiffs have challenged the defendants' conduct with respect to two different processes. First, they attack the defendants conduct with respect to the 1991 California (criminal) felony complaint against Batten. Then they complain about the defendants' conduct in acting upon the 1997, (civil) California 4604 "pick up" order to locate and return Brittany to California. Although the parties have integrated their legal and factual arguments, it is important to distinguish between the felony complaint for Batten and the 4604 pick-up order for Brittany.

The gravamen of the plaintiffs' theory of liability is that (i) Batten should have been afforded extradition proceedings; (ii) the defendants unlawfully seized Batten because they failed to ensure she was informed of her rights and failed to afford her a hearing upon her arrest; (iii) the defendants seized Brittany and transported her to California in violation of North Carolina laws, without any legal authority under such laws, and without any procedural safeguards or review of any judicial authority in California or North Carolina. The plaintiffs contend the defendants' violations of the Uniform Child Custody Jurisdiction and Enforcement Act, N.C. GEN. STAT. § 50A-101 to -317, and the Parental Kidnaping Prevention Act, 28 U.S.C. § 1738A, further violated the plaintiffs' constitutional rights to liberty and familial association under the Fourteenth Amendment, and that the defendants' actions constituted the common law torts of false imprisonment, and intentional or, in the alternative, negligent infliction of emotional distress. The plaintiffs' claims are set forth in a fourteen-count, twenty-seven page Amended Complaint.

A. Felony Complaint for Batten

Plaintiffs' claims based on their contentions that Batten was falsely arrested or unconstitutionally seized are without factual support. Discovery in this case has revealed that, although Batten was made aware of the 1991 felony complaint charging her with abducting Brittany. in she was not arrested in North Carolina. *See* Shuster Deposition at 92-93. Not having been arrested, Batten was not entitled to extradition proceedings, nor was a waiver of extradition necessary. According to the evidence of record, Batten was informed of the felony complaint and she chose, in essence, to "turn herself in" by voluntarily accompanying the investigators to California, rather than electing to be arrested and extradited. It also is evident that if Batten were to be arrested, the local officers would have effected the arrest based on the California warrant.

The court does not read the Uniform Extradition Act to require compliance therewith by a person who learns of criminal charges against her in another state and who elects to travel voluntarily to that state to face the charges. In fact, N.C. GEN. STAT. § 15A-746 states in pertinent part, "Provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this State."

Moreover, the plaintiffs are mistaken in their allegation that the California Investigators tricked or forced Batten into accompanying them back to California by telling her that they were going to take her child with them whether she agreed or not. The record is undisputed that the California Investigators understood the explicit terms of the 4604 order to authorize them to do just that -- "any other peace officer shall take all actions necessary to locate [Brittany]. . . and to return the child to [California]." *See also* CALIF. CIVIL CODE § 4604. Batten was free to demand that she be arrested pursuant to the 1991 felony complaint and afforded formal extradition proceedings. She decided instead to accompany Brittany and the California Investigators to California voluntarily. Because there is no genuine issue of material fact regarding Batten's lack of entitlement to extradition proceedings, the defendants' Motion for Summary Judgment as to her § 1983 claims is ALLOWED, and those claims are DISMISSED.

B. The 4604 California Pick-Up Order

The second basis for the plaintiffs' lawsuit arises from the execution of the 4604 California pick-up order facially ordering that, "The District Attorney of Riverside County and any other peace officer shall take all actions necessary to locate the respondent and the minor child named above and to return the child to the jurisdiction of this court." The plaintiffs have sued the California Investigators under 42 U.S.C. § 1983 only in their individual capacities, although the state tort claims name the defendants in both their individual and official capacities. The instant motion chiefly addresses the defendants' federal claims, correctly assuming, perhaps, that the court would not elect to retain the pendant state law claims if the federal claims were to be dismissed.

Although the defendants also have advanced as grounds for summary judgment the theories of prosecutorial immunity, governmental immunity, judicial immunity, the court concludes that they are on solid ground in their assertion of qualified immunity. While the plaintiffs recognize the general legal principles underlying qualified immunity, their theory of the inapplicability of that law to the undisputed facts in this case is hyperopic.

Government officials are protected by qualified immunity in their individual capacities "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton.* 483 U.S. 635, 638 (1987). A test of qualified immunity for official suit under 42 U.S.C. § 1983 is whether, in performing discretionary functions, a governmental official has engaged in conduct that violates "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982).

Immunity can, therefore be established either on the basis that the right violated was not, at the time. "clearly established", or, even if the right was established and was violated, it was one that a" 'reasonable person' in the officers' position could have failed to appreciate would be violated by his conduct." *Pritchett,* 973 F.2d at 312 (citing *Mitchell v. Forsyth,* 472 U.S. 511, 535 (1985)). A district court, in ruling on a defendants' assertion of qualified immunity, should make three separate determinations: First, the court should identify the specific right alleged to have been violated. Second, the court should determine whether at the time of the alleged violation the right was clearly established. And third, if the court concludes that the right was clearly established, then the court further must decide whether a reasonable person in the defendants' position would have known that his conduct would violate that right. *See Taylor v. Waters*, 81 F.3d 429, 433 (4th Cir. 1996).

Although the plaintiffs recite the necessity of the court's analyzing these three "elements" of a qualified immunity theory, they fail to do so themselves. Instead, the plaintiffs argue the merits of the various statutory and constitutional provisions they contend were violated by the defendants' conduct. Nor have plaintiffs attempted in their discussion of qualified immunity to articulate the specific, clearly established constitutional right they are asserting, except generally to allege, "Third, Plaintiffs' complaint alleges painfully obvious Fourth Amendment violations on the basis of defendants' unreasonable seizure of the Plaintiff and her daughter, without any process in North Carolina, without jurisdiction and without any order from any competent court in North Carolina." Plaintiff's Response Memorandum at 24.

(i) Identification of Specific Right

That such a description of the subject constitutional right is overly broad was pointed out recently in a Seventh Circuit case on very similar facts.[3]

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[3] "Three law enforcement officers, acting on directions from two assistant state's attorneys, took Stacey Morrell's child from her home in Illinois and gave the child to his putative father pursuant to an ex parte order issued by a New Mexico court." *Morreil v. Mock*, 270 F.3d 1090, 1092 (7th Cir. 2001). Although the child's putative father filed the New Mexico order in Illinois, his request for an enforcement order was denied by an Illinois judge. Undeterred, he sought and received assistance from the district attorney's office in Illinois, resulting in his obtaining physical custody of the child.

Although the instant case is based on alleged Fourth and Fourteenth Amendment violations. *Morrell* is instructive as to the appropriate level of particularity with which the specific constitutional right must be described for purposes of a qualified immunity analysis. In *Morrell* the plaintiff argued that "it was clearly established that due process requires notice and an opportunity to be heard before state actors may interfere with a mother's liberty interest in her child." *Morrell"* 270 F.3d at 1100. However, the Seventh Circuit panel determined, that

> [t]he statement of the right at this level of generality.. . is of little help in determining the reasonableness of the defendants' conduct. *See Anderson,* 483 U.S. at 639...; *Wilson,* 526 U.S. at 614-15.... The appropriate question is whether it would be clear to reasonable officials in the defendants' position that enforcing the New Mexico court's order without prior notice or an opportunity to be heard in Illinois was unconstitutional. *See Katz,* 121 S. Ct. at 2156; *Anderson,* 483 U.S. at 639...; *Wilson,* 526 U.S. at 615....

Id. See also Knussman v. Maryland No. 99-2347, 2001 WL 1379871, slip op. at *9 n.9 (4th Cir. Nov. 7, 2001) (the" 'particularity principle'... mandates that courts refer to concrete applications of abstract concepts to determine whether the right is clearly established.") (quoting *Amaechi v.* West 237 F.3d 356, 362 (4th Cir. 2001)); *Taylor* 81 F.3d at 434.

Accordingly. in this case, the "appropriate question" is whether it would be clear to reasonable law enforcement officers in the defendants' position that the following conduct was unconstitutional: Relying on local law enforcement officers' representations that a foreign order was enforceable without further process and that the defendants' proposed action thereon was appropriate; and on that basis, enforcing the order according to its terms, as had been the defendants' practice in dozens of similar cases in other states. *See* Shuster Depo. Tpp. 72-73, 100.

(ii) Cleary Established Law

The plaintiffs are correct in pointing out that the exact conduct at issue in a given case need not have been held to be unlawful in order for the law governing an officer's actions to be "clearly established." Rather. "in light of pre-existing law the unlawfulness must be apparent." *Anderson,* 483 U.S. at 639-40; *see also Pritchett,* 973 F.2d at 314 ("[t]he fact that an exact right allegedly violated has not earlier been specifically recognized by any court does not prevent a determination that it was nevertheless 'clearly established' for qualified immunity purposes.... Clearly established in this context includes not only already-specified adjudicated rights but those manifestly included within the more general applications of the core constitutional principle invoked"). "The law is clearly established such that an officer's conduct transgresses a bright line when the law has 'been authoritatively decided by the Supreme Court, the appropriate United States Court of Appeals. or the highest court of the state.'" *Wilson v.* Layne, 141 F.3d 111, 114 (4th Cir. 1998), *aff'd,* 526 U.S. 603 (1999).

The plaintiffs simply have failed to refer to Supreme Court, Fourth Circuit or North Carolina Supreme Court case law that authoritatively decides the dispositive legal issue articulated above. That it is unconstitutional to seize a person without due process and in violation of her Fourth and Fourteenth Amendment rights against unreasonable seizure, although a clearly established legal premise, is not sufficiently particularized for qualified immunity purposes on the facts of this case. *See Amaechi,* 237 F.3d at 362.

(iii) Reasonable Officers

Furthermore, the plaintiffs have failed to proffer any evidence tending to raise an issue of material fact as to the defendants' showing, by way of their depositions other evidence of record, that their reliance on representations by local law enforcement authorities was anything other than objectively reasonable. Particularly in light of the unrefuted testimony that such a course of conduct was the norm for the defendants, no evidence exists that a consensus of cases or persuasive authority otherwise makes clear that a reasonable officer in the defendants' position at the time could not have believed that his actions were unlawful, or that it is obvious from the general principles of the clearly established right at issue that the conduct of the officers violated that right. *See Wilson,* 526 U.S. at 614-15.

The Fourth Circuit's discussion of objective reasonableness in *Pritchett* bears repeating:

> [T]he determination whether a reasonable person in the officer's position would have known that his conduct would violate the right at issue must be made *on the basis of information actually possessed by the officer at the critical time,*... or that was then reasonably available to him,... and in light of any exigencies of time and circumstances that reasonably may have affected the officer's perception..... The tolerance thus accorded by the qualified immunity defense to "good faith" mistakes of judgment traceable to unsettled law, *or faulty information,* or contextual exigencies, is deliberately designed to give protection to "all but the plainly incompetent or those who knowingly violate the law... in order to avoid undue inhibitions in the performance of official duties....

Pritchett, 973 F.2d at 312-13 (emphasis added) (citations omitted).

In this case, then, whether or not the California Investigators in fact acted without proper authority, or violated Brittany's constitutional rights or any state or federal statute; whether or not Deputy Guyton in fact discussed the 4604 order with then-Assistant District Attorney Warren and regardless of whether the defendants were or were not present during any such discussion; whether or not Warren in fact approved the California order or even recalls discussing it with Guyton; whether anyone took or retained notes of any discussion with Warren; and whether or not Investigator Gomez was or was not sure the local law enforcement authorities in fact obtained the advice of counsel by speaking with Warren, the plaintiffs simply have failed to demonstrate the existence of a genuine issue of *material* fact necessary to determine the qualified immunity issue. Plaintiffs have offered no evidence at all to undermine the defendants' showing of the objective reasonableness of their reliance on the representations of local law enforcement officials that the order was "in order," and that nothing further was necessary before enforcing that order. Therefore, there being no genuine issue of material fact and it appearing that the defendants are entitled to judgment as a matter of law, the defendants' Motion for Summary Judgment as to all claims arising from their execution of the 4604 order is ALLOWED.[4]

CONCLUSION

In short, although it is clear that Ms. Batten is distraught and incensed by the fact of and the circumstances surrounding the execution in 1997 of the 1991 felony complaint and 4604 court order, there simply is no ground for civil liability against the California Investigators with regard to their roles in the incident. The court finds that the plaintiffs have failed to demonstrate the existence of any genuine issue of *material* fact necessitating a trial; and further concludes that no reasonably jury could find that the defendants acted in an objectively unreasonable manner in relying on local authorities' authorizing them to execute the California 4604 order, or that plaintiff Batten was coerced into accompanying the defendants to California.

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[4] The plaintiffs' assertions that the defendants' conduct violated N.C. GEN. STAT. §§ 50A-101 to -317 (the Uniform Child Custody Jurisdiction and Enforcement Act) are misguided. That Act did not become effective until October 1, 1999; in 1997, when these events occurred, the Uniform Child Custody Jurisdiction Act, N.C. GEN. STAT. §§ 50A-1 to -25 controlled interstate child custody disputes.

For the foregoing reasons, therefore, the defendants' Motion for Summary Judgment is ALLOWED as to all federal claims remaining in this case. The court exercises its discretion not to retain jurisdiction of the supplemental state tort claims. 28 U.S.C. § 1367(c)(3). This case is DISMISSED.

SO ORDERED.

This the 21st day of December, 2001.

/s/________________________
JAMES C. FOX
Senior United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

JUDGEMENT IN A CIVIL CASE
NO. 7:99-CV-198-F1

filed December 21, 2001

LUCINDA LANGDON BATTEN; and
BRITTANY ROSE LANGDON, a minor by and
through her Guardian Ad Litem,
Cynthia A. Singletary,
Plaintiffs,

v.

LEE GUY, in his official and individual capacities as
Deputy Sheriff of Bladen County, North Carolina;
LARRY GUYTON, in his official and individual
capacities as an Investigator for the Sheriff's
Department of Bladen County, North Carolina;
STEVEN LESANE, in his official and individual
capacities as Deputy Sheriff of Bladen County,
North Carolina;
STEVEN GOMEZ, in his official and individual
capacities as a Senior Investigator for the District
Attorney of Riverside County, California;
SANDRA SHUSTER, in her official and individual
capacities as Senior Investigator for the District
Attorney of Riverside County, California and
NATIONAL UNION FIRE COMPANY OF
PITTSBURGH, P.A.,
Defendants.

___ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that the parties hereto, through counsel and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, filed with the court on May 2, 2001, hereby stipulate and agree that all claims asserted in this action against defendants Lee Guy, Larry Guyton, Steve Lesane, and the Insurance Company of North America are DISMISSED with prejudice and that defendants Lee Guy, Larry Guyton, Steve Lesane and the Insurance Company of North America are hereby DISMISSED as parties to this action.

IT IS FURTHER ORDERED that the remaining defendants' Motion for Summary Judgement is ALLOWED as to all federal claims remaining in this case. The court exercises its discretion not to retain jurisdiction of the supplemental state tort claims. 28 U.S.C. § 1367(c)(3). This case is DISMISSED.

42 U.S.C. § 1983. - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

Chapter 50A.

Uniform Child Custody Jurisdiction Act.

§ 50A-1. Purposes of Chapter, construction of provisions.

(a) The general purposes of this Chapter are to:

1. Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

2. Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

3. Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and the child's family have the closest connection and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and that courts of this State decline the exercise of jurisdiction when the child and the child's family have a closer connection with another state;

4. Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

5. Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

6. Avoid re-litigation of custody decisions of other states in this State insofar as feasible;

7. Facilitate the enforcement of custody decrees of other states;

8. Promote and expand the exchange of information and other forms of mutual assistance between the courts of this State and those of other states concerned with the same child; and

9. Make uniform the law of those states which enact it.

(b) This Chapter shall be construed to promote the general purposes stated in this section.

'50A-2. Definitions.

As used in this Chapter:

1. "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

2. "Custody determination" means a Court decision and Court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

3. "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings;

4. "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

5. "Home state" means the state in which the child immediately preceding the time involved lived with the child's parents, a parent, or a person acting as parent, for at least six consecutive months, and in the

case of a child less than six months old, the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period;

6. "Initial decree" means the first custody decree concerning a particular child;

7. "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the Court which rendered the prior decree or by another Court;

8. "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a Court or claims a right to custody;

9. "Physical custody" means actual possession and control of a child; and

10. "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

' 50A-3. Jurisdiction.

(a) A Court of this State authorized to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

1. This State (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within six months before commencement of the proceeding and the child is absent from this State because of the child's removal or retention by a person claiming the child's custody or for other reasons, and a parent or person acting as parent continues to live in this State; or

2. It is in the best interest of the child that a Court of this State assume jurisdiction because (i) the child and the child's parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence relevant to the child's present or future care, protection, training, and personal relationships; or

3. The child is physically present in this State and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because

the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

4.(i) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this Court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a Court of this State to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

' 50A-4. Notice and opportunity to be heard.

Before making a decree under this Chapter reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child.

' 50A-5. Service of notice.

The notice required by G.S. 50A-4 shall be given in a manner reasonably calculated to give actual notice and shall be served in the same manner as the manner of service of process set out in G.S. 1A-1, Rule 4. Proof of the service of the notice required by G.S. 50A-4 shall be made in the same manner as the manner to prove the service of process set out in G.S. 1A-1, Rule 4.

' 50A-6. Simultaneous proceedings in other states.

(a) If at the time of filing the petition a proceeding concerning the custody of the child was pending in a Court of another state exercising jurisdiction substantially in conformity with this Chapter, a Court of this State shall not exercise its jurisdiction under this Chapter, unless the proceeding is stayed by the Court of the other state because this State is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the Court shall examine the pleadings and other information supplied by the parties under G.S. 50A-9 and shall consult the child custody registry established under G.S. 50A-16 concerning the pendency of proceedings with respect to the child in other states. If the Court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state Court administrator or other appropriate official of the other state.

(c) If the Court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the Court assumed jurisdiction it shall stay the proceeding and communicate with the Court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with G.S. 50A-19 through G.S. 50A-22. If a Court of this State has made a custody decree before being informed of a pending proceeding in a Court of another state it shall immediately inform that Court of the fact. If the Court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other Court to the end that the issues may be litigated in the more appropriate forum.

' 50A-7. Inconvenient forum.

(a) A Court which has jurisdiction under this Chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a Court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the Court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the Court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

1. If another state is or recently was the child's home state;

2. If another state has a closer connection with the child and the child's family or with the child and one or more of the contestants;

3. If substantial evidence relevant to the child's present or future care, protection, training, and personal relationships is more readily available in another state;

4. If the parties have agreed on another forum which is no less appropriate; and

5. If the exercise of jurisdiction by a Court of this State would contravene any of the purposes stated in G.S. 50A-1.

(d) Before determining whether to decline or retain jurisdiction the Court may communicate with a Court of another state and exchange information pertinent to the assumption of jurisdiction by either Court with a view to assuring that jurisdiction will be exercised by the more appropriate Court and that a forum will be available to the parties.

(e) If the Court finds that it is an inconvenient forum and that a Court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate such party's consent and submission to the jurisdiction of the other forum.

(f) The Court may decline to exercise its jurisdiction under this Chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the Court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this State, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the Court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the Court shall inform the Court found to be the more appropriate forum of this fact, or if the Court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the Court administrator or other appropriate official for forwarding to the appropriate Court.

(i) Any communication received from another state informing this State of a finding of inconvenient forum because a Court of this State is the more appropriate forum shall be filed in the custody registry of the appropriate Court. Upon assuming jurisdiction the Court of this State shall inform the original Court of this fact.

' 50A-8. Jurisdiction declined by reason of conduct.

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the Court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the Court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the Court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) In appropriate cases a Court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

' 50A-9. Information under oath to be submitted to the Court.

(a) Every party in a custody proceeding in such party's first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

1. Such party has participated as a party, witness, or in any other capacity in any other litigation concerning the custody of the same child in this or any other state;

2. Such party has information of any custody proceeding concerning the child pending in a Court of this or any other state; and

3. Such party knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the Court. The Court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the Court's jurisdiction and the disposition of the case.

(c) each party has a continuing duty to inform the Court of any custody proceeding concerning the child in this or any other state of which such party obtained information during this proceeding.

' 50A-10. Additional parties.

If the Court learns from information furnished by the parties pursuant to G.S. 50A-9 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of such person's joinder as a party. Such person shall be served with process or otherwise notified in accordance with G.S. 50A-5.

' 50A-11. Appearance of parties and the child.

(a) The Court may order any party to the proceeding to appear personally before the Court. If that party has physical custody of the child, the Court may order that such party appear personally with the child.

(b) The Court may order that the notice given under G.S. 50A-5 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the Court with or without the child, the Court may require another party to pay to the clerk of the Court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

' 50A-12. Binding force and res judicata effect of custody decree.

A custody decree rendered by a Court of this State which has jurisdiction under G.S. 50A-3 binds all parties who have been served or notified in accordance with G.S. 50A-5 or who have submitted to the jurisdiction of the Court, and who have been given an opportunity to be heard. As to those parties, the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Chapter.

' 50A-13. Recognition of out-of-state custody decrees.

The courts of this State shall recognize and enforce an initial or modification decree of a Court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Chapter or which was made under factual circumstances meeting the jurisdictional standards of this Chapter, so long as that decree has not been modified in accordance with jurisdictional standards substantially similar to those of this Chapter.

' 50A-14. Modification of custody decree of another state.

(a) If a Court of another state has made a custody decree, a Court of this State shall not modify that decree unless (1) it appears to the Court of this State that the Court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Chapter or has declined to assume jurisdiction to modify the decree and (2) the Court of this State has jurisdiction.

(b) If a Court of this State is authorized under subsection (a) and G.S. 50A-8 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with G.S. 50A-22.

' 50A-15. Filing and enforcement of custody decree of another state.

(a) An exemplified copy of a custody decree of another state may be filed in the office of the clerk of any superior Court of this State. The clerk shall treat the decree in the same manner as a custody decree of a Court of this State. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a Court of this State.

(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this State may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or such party's witnesses.

' 50A-16. Registry of out-of-state custody decrees and proceedings.

The clerk of each superior Court shall maintain a registry in which he shall enter the following:

1. Exemplified copies of custody decrees of other states received for filing;

2. Communications as to the pendency of custody proceedings in other states;

3. Communications concerning a finding of inconvenient forum by a Court of another state; and

4. Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a Court of this State or the disposition to be made by it in a custody proceeding.

' 50A-17. Certified copies of custody decree.
The clerk of a superior Court of this State, at the request of the Court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that Court or person.

' 50A-18. Taking testimony in another state.

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The Court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

' 50A-19. Hearings and studies in another state; orders to appear.

(a) A Court of this State may request the appropriate Court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state; and to forward to the Court of this State certified copies of the transcript of the record of the hearing, and the evidence otherwise adduced. The cost of the services may be assessed against the parties in the discretion of the Court.

(b) A Court of this State may request the appropriate Court of another state to order a person notified under the provisions of G.S. 50A-4 in a custody proceeding pending in the Court of this State to appear in the proceedings, and if that person has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

' 50A-20. Assistance to courts of other states.

(a) Upon request of the Court of another state the courts of this State which are authorized to hear custody matters may order a person in this State to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this State or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the Court to the requesting Court.

(b) A person within this State may voluntarily give testimony or a statement in this State for use in a custody proceeding outside this State.

(c) Upon request of the Court of another state a competent Court of this State may order a person in this State to appear alone or with the child in a custody proceeding in another state. The Court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

' 50A-21. Preservation of documents for use in other states.

In any custody proceeding in this State the Court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the Court of another state the Court shall forward to the other Court certified copies of any or all of such documents.

' 50A-22. Request for Court records of another state.

If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a Court of this State, the Court of this State upon taking jurisdiction of the case may request of the Court of the other state a certified copy of the transcript of any Court record and other documents mentioned in G.S. 50A-21.

' 50A-23. International application.

The general policies of this Chapter extend to the international area. The provisions of this Chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

' 50A-24. Short title.

This Chapter may be cited as the "Uniform Child Custody Jurisdiction Act."

' 50A-25. Emergency orders.

Nothing in this Chapter shall be interpreted to limit the authority of the Court to issue an interlocutory order under the provisions of G.S. 50-13.5(d)(2); or a secure or nonsecure custody order under the provisions of G.S. 7A-573.

U.S. Constitution: Fourteenth Amendment

Fourteenth Amendment - Rights Guaranteed Privileges and Immunities of Citizenship, Due Process and Equal Protection

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION

No. 7-99-CV-198-F1

LUCINDA LANGDON BATTEN and
BRITTANY ROSE LANGDON, a minor
by and through her guardian ad litem,
Cynthia A. Singletary.
Plaintiffs
v.
LEE GUY, in his official and individual
capacities as Deputy Sheriff of Bladen
County, North Carolina;
LARRY GUYTON, in his official and
individual capacities as an Investigator
for the Sheriff's Department in Bladen
County, North Carolina;
STEVE LESANE, in his official and
individual capacities as Deputy Sheriff of
Bladen County, North Carolina;
STEVEN GOMEZ, in his official and
individual capacities as a Senior
Investigator for the District Attorney of
Riverside County, California;
SANDRA SHUSTER, in her official and
individual capacities as Senior
Investigator for the District Attorney of
Riverside County, California, and
THE INSURANCE COMPANY OF
NORTH AMERICA,
Defendants

PLAINTIFFS' FIRST AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

1. This is an action for damages sustained by citizens of the United States against LEE GUY, a Deputy Sheriff for the Bladen County, North Carolina Sheriff's Department; LARRY GUYTON, an Investigator for the Bladen County, North Carolina Sheriff's Department; STEVE LESANE, a Deputy Sheriff for the Bladen County, North Carolina's Sheriff's Department; STEVEN GOMEZ, Senior Investigator for the District Attorney of Riverside County, California, and SANDRA SHUSTER, Senior Investigator for the District Attorney of Riverside County, who jointly and severally, while acting under color of law, subjected or caused the Plaintiff LUCINDA LANGDON BATTEN and BATTEN'S ward, BRITTANY ROSE LANGDON, to be subjected to a violation of rights secured by the Constitution and laws of the United States on January 24, 1997, and days thereafter through their unlawful seizure, false imprisonment, false arrest and deprivation of due process of law.

2. This Complaint contains multiple civil rights actions, filed pursuant to 42 U.S.C. §§ 1983 and 1988, predicated on violations of the Plaintiffs' federal constitutional rights under the Fourth Amendment, incorporated through the Fourteenth Amendment, and the Fourteenth Amendment impliciter to the Constitution of the United States as well as a series of supplemental state law causes of action sounding in tort, filed pursuant to North Carolina law.

II. JURISDICTION AND VENUE

3. Jurisdiction of this Court is invoked pursuant to N. C. Gen. Stat. § 7A-243 for all causes of action. The unlawful acts and practices alleged below were all committed within Bladen County, North Carolina and, by a pattern of continuous illegal conduct, in Riverside County, California. The matter in controversy exceeds the sum of $10,000 excluding interest and costs.

III. THE PARTIES

4. The Plaintiffs, BATTEN and LANGDON, by and through her guardian ad litem Cynthia A. Singletary, are citizens and residents of the United States, who at all times relevant to the allegations of this Complaint resided in Bladen County, North Carolina. Plaintiff Cynthia A. Singletary was duly appointed as guardian ad litem of BRITTANY ROSE LANGDON by Order of the Clerk of Superior Court of Bladen County, North Carolina on or about the 3rd day of September, 1999.

5. Upon information and belief, at all times relevant hereto, Defendant GUY was a citizen and resident of the United States residing in Bladen County, North Carolina, and at all times relevant hereto was a duly authorized law enforcement officer, employed by the Sheriff of Bladen County, North Carolina, performing law enforcement duties on behalf of Bladen County, including enforcement of the laws of

the State of North Carolina. At all times relevant hereto, Defendant GUY was acting in such capacity as the agent, servant and employee of the Sheriff of Bladen County. Defendant GUY is sued in his individual capacity as to the claims under 42 U.S.C. § 1983 and in his official and individual capacities as to the state claims.

6. Upon information and belief, at all relevant times hereto, Defendant GUYTON was a citizen and resident of the United States residing in Bladen County, North Carolina, and at all times relevant hereto was a duly authorized law enforcement officer employed by the Sheriff of Bladen County, North Carolina, performing duties on behalf of Bladen County, including enforcement of the laws of the State of North Carolina. At all times relevant hereto, Defendant GUYTON was acting in such capacity as the agent, servant and employee of the Sheriff of Bladen County. Defendant GUYTON is sued in his individual capacity as to the claims under 42 U.S.C. § 1983 and in his individual and official capacities as to the state claims.

7. Upon information and belief, and at all relevant times hereto, Defendant LESANE was a citizen and resident of the United States residing in Bladen County, North Carolina, and at all times relevant hereto was a duly authorized law enforcement officer employed by the Sheriff of Bladen County, North Carolina, performing duties on behalf of Bladen County, including enforcement of the laws of the State of North Carolina. At all times relevant hereto, Defendant LESANE was acting in such capacity as the

agent, servant and employee of the Sheriff of Bladen County. Defendant LESANE is sued in his individual capacity as to the claims under 42 U.S.C. § 1983 and in his individual and official capacities as to the state claims.

8. On information and belief, pursuant to Article 11 of the Constitution of the State of California and Chapter 1 of the California Government Code, the District Attorney of Riverside County, California is an Officer of the County of Riverside, California, who, among other things, is responsible for the investigation and prosecution of alleged criminal conduct arising in Riverside County, California. In carrying out his duties and responsibilities, the District Attorney of Riverside County, California, maintains a staff including assistant prosecutors and investigators, the latter of which are credentialed and authorized to act as law enforcement officers for the County of Riverside, California, in matters of investigation and their official acts constitute policy of the Office of the District Attorney of Riverside County, California.

9. Upon information and belief, at all relevant times hereto, Defendant SHUSTER was a citizen and resident of the United States, residing in Riverside County, California, and at all times relevant hereto was a duly authorized Senior Investigator, Bureau of Investigations, Office of the District Attorney of Riverside County, performing duties on behalf of Riverside County, including enforcement of the laws of the State of California. At all times relevant hereto, Defendant SHUSTER was acting in such capacity as the agent, servant and employee of the District Attorney of

Riverside County, California, an Officer of Riverside County, California. Defendant Shuster is sued in her individual and official capacities as to the claims under 42 U.S.C. §1983 and in her individual capacities as to the state claims.

10. At all relevant times hereto, Defendant GOMEZ was a citizen and resident of the United States residing in Riverside County, California, and at all times relevant hereto was a duly authorized Senior Investigator of the Bureau of Investigations, Office of the District Attorney of Riverside County, performing duties on behalf of Riverside County, California including enforcement of the laws of the State of California. At all times relevant hereto, Defendant GOMEZ was acting in such capacity as the agent, servant and employee of the District Attorney of Riverside County, California, an Officer of Riverside County, California. Defendant Gomez is sued in his individual capacity as to the claims under 42 U.S.C. §1983 and in his individual and official capacities as to the state claims.

11. On information and belief, the INSURANCE COMPANY OF NORTH AMERICA, is a foreign insurance company, licensed to do business in the State of North Carolina, and is statutory surety for the Sheriff of Bladen County.

12. At all times relevant hereto, Defendants LEE, GUYTON and LESANE, and each of them, were acting under color of state law, that is, under color of the Constitution, statutes, laws, rules, regulations, customs and usages of the State of North Carolina.

13. At all times relevant hereto, Defendants GOMEZ and SHUSTER, and each of them, were acting under color of State law, that is, under color of the Constitution, statutes, laws, rules, regulations, customs and usages of the State of California.

14. During all times mentioned in this Complaint, the Defendants, and each of them, conspired, agreed and engaged in acts and omissions amounting to a deprivation of the constitutional rights, privileges and immunities of Plaintiffs. These acts, which were carried out under color of state law, had no justification or excuse in law, being instead illegal, improper and unrelated to any activity in which law enforcement officers and officials may appropriately and legally engage in the course of protecting persons and property or in insuring civil order.

15. On information and belief, Bladen County, North Carolina, has waived governmental immunity for itself, its agents and officials acting in their official capacity, including Defendants LEE, GUYTON and LESANE, pursuant to N.C. Gen. Stat. § 153A-435 (1995), for civil liability in tort by the act of purchasing liability insurance prior to the acts and issues alleged herein.

16. On information and belief, Riverside County, California, has waived governmental immunity for itself, its agents and officials acting in their official capacity, including Defendants GOMEZ and SHUSTER by the act of purchasing liability insurance prior to the acts and issues alleged herein.

IV. FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983 Claim Against All Defendants in their individual capacities only for unreasonable seizure of Plaintiff BATTEN)

17. This first claim for relief seeks to recover damages from the Defendant GOMEZ, SHUSTER, GUY, GUYTON and LESANE, in their individual capacities only, for the deprivation, under color of law, of the of law, of the civil rights of the Plaintiff BATTEN, in violation of 42 U.S.C. § 1983 and Fourteenth Amendments to the Constitution of the United States.

18. On July 10, 1990, Plaintiff LANGDON was born to the unwed union of Plaintiff BATTEN, and Timothy Soulis in Orange County, California.

19. In November of 1990, after being repeatedly assaulted and threatened by Timothy Soulis, while in dire fear for her safety and that of her child LANGDON, Plaintiffs BATTEN and LANGDON left the State of California and returned to BATTEN'S home state, North Carolina.

20. On information and belief, on November 30, 1990, Timothy Soulis filed an Order to Show Cause for Child Custody and Visitation in the Family Law Court (Case No. D97621) in Riverside County, California; his application for an order granting him temporary custody was DENIED, and a hearing date was set for December 20, 1990.

21. No service of process of said proceeding (Case No. D97621) was ever served on Plaintiff BATTEN and no order granting Timothy Soulis Custody of Plaintiff LANGDON was granted prior to January 24, 1997.

22. Thereafter, upon "Declaration in Support of Arrest Warrant" made by Millie Burns, a peace officer employed by the Riverside County District Attorney's Office, Child Abduction Unit on or about July 16, 1991, a felony complaint (Case No. C22554) was issued by the Municipal Court of Riverside County, California, charging Plaintiff BATTEN with child abduction, in violation of Section 277 of the California Penal Code.

23. On or about July 22, 1991, an Order was entered in Case No. D97621, pursuant to California Civil Code, Sec. 4604, directing the District Attorney of Riverside County to take all actions necessary to locate Plaintiffs BATTEN and LANGDON and to return Plaintiff BATTEN and the child to the jurisdiction of the court.

24. The matters and things alleged in paragraphs 20-24 were unknown to Plaintiff BATTEN until subsequent to January 24, 1997.

25. On or about June 14, 1995, Plaintiff BATTEN filed a Petition to Terminate Parental Rights of Timothy Soulis in the District Court of Bladen County, North Carolina (Case number 95J43); attempts to effect service of process on Timothy Soulis by registered mail were unsuccessful.

26. On or about January 4, 1997, in Bladen County, North Carolina, Plaintiff BATTEN discovered one Donnie Guy peeping into a window at her residence while she was changing clothes.

27. On or about January 4, 1997, Plaintiff BATTEN appeared before a Bladen County Magistrate and obtained a criminal summons charging Donnie Guy with a criminal violation of N.C. Gen. Stat. § 14-202, "Secretly Peeping Into a Room Occupied by a Female Person"; trial in the matter was set for January 27, 1997.

28. On information and belief, Donnie Guy is the brother of Defendant GUY.

29. On information and belief, upon issuance and service of the criminal summons referred to in paragraph 26, Defendant GUY set out to unlawfully deter Plaintiff BATTEN from being present and available to give testimony in the prosecution of his brother, Donnie Guy; on information and belief, in this effort, Defendant GUY enlisted the assistance of Defendants GUYTON, LESANE, SHUSTER and GOMEZ and others unknown to Plaintiff as witting or unwitting participants.

30. On information and belief, pursuant thereto, between January 4, 1997, and January 20, 1997, Defendant GUY determined the existence of the 1991 California Warrant charging Plaintiff BATTEN with child abduction, and contacted Defendant SHUSTER. He arranged for Investigators of the District Attorney of Riverside, California to come to Bladen County,

North Carolina, to seize and arrest Plaintiff BATTEN and to seize custody of her daughter LANGDON, and to take them to the State of California.

31. On Friday, January 24, 1997, Plaintiff BATTEN was at her place of work, Carolina Food Processors, in Tarheel, North Carolina, when Defendants GUYTON and GOMEZ entered Carolina Food Processors and asked Plaintiff BATTEN be called to the front office.

32. When Plaintiff BATTEN walked to the front office, she was told by Defendants GUYTON and GOMEZ, who had no lawful authority to do so, that she was being taken into the custody of GOMEZ on a California "kidnaping" charge as a result of a criminal complaint filed by Timothy Soulis. GUYTON informed Plaintiff BATTEN she was to listen to GOMEZ and to do everything he said she should do.

33. Defendants GUYTON and GOMEZ, without legal authority, also informed Plaintiff BATTEN that her child, Plaintiff LANGDON, was being seized from her school and would be removed to the State of California where she would be placed in the custody of Timothy Soulis.

34. Defendant GOMEZ told Plaintiff BATTEN she could either return with him to California with her daughter or remain imprisoned in Bladen County until she could be transferred to California; these statements were false and were made with reckless and willful disregard of the provisions of Article 37 of Chapter 15A of the General Statues of

North Carolina and were, in fact, calculated to mislead Plaintiff BATTEN and to trick her into an involuntary and uninformed waiver of her statutory rights guaranteed under the Constitution of the United States.

35. Plaintiff BATTEN reluctantly agreed to accompany GOMEZ; said consent was not a knowing, intelligent or voluntary waiver of rights, but instead resulted from coercion and fear brought about by Plaintiff BATTEN's reasonable belief that if she did not accompany the officers, she might never see her child Plaintiff LANGDON again.

36. Defendant's actions, in effect, constituted an actual or, alternatively, constructive seizure of Plaintiff BATTEN.

37. At all times during the arrest of Plaintiff BATTEN, Defendant GUYTON stood aside and failed to insure she was informed of her rights upon arrest and to be afforded a hearing on her arrest pursuant to Article 37 of Chapter 15A of the General Statutes of North Carolina; instead he aided and abetted GOMEZ in his illegal and unconstitutional seizure and detention of Plaintiff BATTEN.

38. On information and belief, on or about January 24, 1997, Plaintiff LANGDON was attending classes at her elementary school in Bladen County, North Carolina.

39. Upon information and belief, during the afternoon, Defendants SHUSTER and LESANE entered her school and told the principal they were there to

remove Plaintiff LANGDON from school, pursuant to instructions from the District Attorney in Riverside County, California.

40. On information and belief, when the principal informed SHUSTER and LESANE that he needed to see written authorization before he could release custody of the child to them, LESANE interceded, stated he had reviewed SHUSTER's papers, and "they were all in order."

41. The statements of Defendant LESANE to the principal were false and made either with knowing or reckless and wanton disregard of the truth and in deliberate disregard of the rights of Plaintiff LANGDON under the statutory laws of the state of North Carolina and the Constitution of the United States.

42. At all times during the illegal and wrongful seizure of Plaintiff LANGDON from her school, Defendant LESANE stood aside and allowed the illegal seizure to occur and made no attempt to insure the sanctity of Plaintiff LANGDON'S constitutional rights.

43. Thereupon, LESANE and SHUSTER seized the person of Plaintiff LANGDON and removed her from the school premises and transported her to Fayetteville Regional Airport, Fayetteville, North Carolina, for transport to the State of California.

44. On January 24, 1997, Plaintiffs BATTEN and LANGDON were placed on an airplane in Fayetteville, North Carolina, by Defendants, and were taken into the State of California by the Defendants SHUSTER and GOMEZ without any judicial or legal authority of any jurisdiction.

45. Upon arrival in the State of California on January 24, 1997, Plaintiff BATTEN was taken before a magistrate, released on her own recognizance and placed in a Holiday Inn.

46. Thereafter, between the dates of January 24, 1997, and January 27, 1997, realizing the initial hearing of the case against Donnie Guy was scheduled to be heard in the District Court of Bladen County, NC on January 27, 1997, Plaintiff BATTEN called her personal attorney, Goldston Womble in Bladen County, North Carolina, explained her circumstances to him, and requested he appear on her behalf in the District Court of Bladen County, on January 27, 1997, to obtain a continuance of that proceeding until she could return to North Carolina.

47. On January 27, 1997, Goldston Womble appeared in the District Court of Bladen County, spoke with the Assistant District Attorney in charge of prosecutions that date, explained Plaintiff BATTEN's situation, and requested the District Attorney either continue the case or move the court to continue the case until Plaintiff BATTEN could return to North Carolina.

48. The assistant district attorney refused to either continue the case or to request the Court for a continuance; instead, he promptly, voluntarily dismissed the criminal proceedings against Donnie Guy.

49. On information and belief, the refusal of an assistant district attorney in Bladen County to either continue a case or request the court to continue a case set at its initial hearing because of the unavoidable absence of the State's own prosecuting witness, is unprecedented.

50. On information and belief, Defendant GUY interceded on behalf of his brother with the assistant district attorney and, with Plaintiff BATTEN in California, ensured the criminal case against Donnie Guy was dismissed.

51. On January 24, 1997, custody of Plaintiff LANGDON was awarded to one Larry Grimsett of the Riverside County Department of Social Services, Riverside, California, and said minor child was placed in foster care with persons and a place unknown to Plaintiff BATTEN.

52. Thereafter, in an ex parte proceeding held on January 27, 1997, temporary custody of BRITTANY ROSE LANGDON was given to Timothy Soulis, who promptly removed said child from the State of California, to parts unknown.

53. Subsequently, a hearing on custody was scheduled in the Superior/Municipal Court of Riverside, California, for February 18, 1997.

54. From January 27, 1997, until February 19, 1997, Plaintiff BATTEN had no contact, other than telephonic, with her daughter Plaintiff LANGDON, and during that time determined much of the information given to California officials by Timothy Soulis concerning his residence and living arrangements was false. Plaintiff BATTEN also had no knowledge of her daughter's whereabouts.

55. Because she did not have sufficient funds to pay for travel between North Carolina and California in order to defend herself on the pending criminal charge and to assert her rights in the custody proceeding, Plaintiff BATTEN was forced to remain in California until February 19, 1997.

56. On February 18, 1997, an Order was entered recognizing the courts of the State of California had no jurisdiction over the question of the custody of Plaintiff LANGDON and that the court system of the State of North Carolina was the proper jurisdiction to determine the question of custody; therefore, the proceedings were dismissed contingent upon the courts of North Carolina taking jurisdiction, and the custody of Plaintiff LANGDON was returned to Plaintiff BATTEN.

57. Plaintiff BATTEN and Plaintiff LANGDON returned to the State of North Carolina, whereupon Plaintiff BATTEN initiated proceedings in

the District Court of Bladen County, North Carolina which awarded her custody of Plaintiff LANGDON.

58. Thereafter, Plaintiff BATTEN, at great expense and inconvenience, was forced to make multiple trips to California to defend herself on the 1991 criminal complaint.

59. On May 12, 1997, all charges against Plaintiff BATTEN were dismissed by the District Attorney of Riverside County, California.

60. The seizure of Plaintiff BATTEN by Defendants GOMEZ and SHUSTER with the assistance of Defendants GUY, GUYTON and LESANE, and her subsequent interstate transfer to the State of California, all without legal authority in North Carolina and California, without jurisdiction and without affording her the procedural safeguards provided by Article 37 of Chapter 15A of the General Statutes of North Carolina and the Constitution of the United States, constitutes an unreasonable seizure in violation of the Fourth Amendment as incorporated by the Fourteenth Amendment.

61. All of the acts herein alleged were done by the Defendants GOMEZ and SHUSTER, with the knowledge, intent and participation of Defendant GUY, GUYTON and LESANE, under color, authority and pretense of the statutes, ordinances, regulations, customs and usages of the States of North Carolina and California and under the authority of their offices, said offices being hereinabove set forth.

62. All of the acts alleged in this complaint were committed by the Defendants GOMEZ, SHUSTER, GUY, GUYTON and LESANE in a willful, wanton and reckless manner with a deliberate disregard for the Plaintiff BATTEN'S Constitutional rights, specifically her right to be secure as a person against unreasonable seizure as set forth in the Fourth and Fourteenth Amendments to the United States Constitution.

63. Defendants conspired together, aided and abetted, and otherwise assisted each other, in all acts herein complained of and, thus, proximately caused the deprivation of Plaintiff BATTEN's constitutional and civil rights.

64. As a direct and proximate result of the foregoing acts and conduct of the Defendants GOMEZ, SHUSTER, GUY, GUYTON and LESANE, Plaintiff BATTEN suffered serious physical and mental anguish, humiliation, injury and trauma and loss of income.

65. Any reasonable law enforcement officer would have known Defendant's conduct violated clearly established Constitutional rights of the Plaintiff under the Fourth and Fourteenth Amendments as set forth above.

V. SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983 Claim against All Defendants in their individual capacities only, for unreasonable seizure of Plaintiff LANGDON)

66. The allegations in 1-65 are incorporated herein by reference.

67. Defendants GOMEZ, SHUSTER, GUY, GUYTON and LESANE's actions (in their individual capacities only), with the knowing and willful assistance of Defendant GUY, in seizing the person of Plaintiff LANGDON and in subsequently transporting her, interstate, to the State of California were illegal, done in violation of the statutory laws of the State of North Carolina, accomplished without any legal authority under the laws of the United States or the State of North Carolina or California and occurred without any procedural safeguards or review by or order of any judicial authority in either state and constitute an unreasonable seizure of Plaintiff LANGDON in violation of her rights under the Fourth Amendment to the Constitution of the United States, as incorporated by the Fourteenth Amendment.

68. All of the acts herein alleged were done by the Defendants GOMEZ, SHUSTER, GUY, GUYTON and LESANE under color, authority and pretense of the statutes, ordinances, regulations, customs and usages of the States of North Carolina and California, and under the authority of their offices, said offices being hereinabove set forth.

69. All of the acts alleged in this complaint were committed by the Defendants in a willful, wanton and reckless manner with a deliberate disregard for the Plaintiff LANGDON's Constitutional rights, specifically her right to be secure as a person against unreasonable seizure as set forth in the Fourth and Fourteenth Amendments to the United States Constitution.

70. As a direct and proximate result of the foregoing acts and conduct of the Defendants GOMEZ, SHUSTER, GUY, GUYTON and LESANE, Plaintiff LANGDON suffered serious mental and physical anguish, humiliation, injury and trauma.

71. Any reasonable law enforcement officer would have known that Defendant's conduct violated clearly established Constitutional rights of the Plaintiffs under the Fourth and Fourteenth Amendments as set forth above.

VI. THIRD CLAIM FOR RELIEF

(Alternative 42 U.S.C. § 1983 Claim against Defendants GUYTON and LESANE, in their individual capacities only, for failure to intervene to protect Plaintiff BATTEN against unreasonable seizure)

72. The allegations in paragraphs 1-71 are incorporated herein by reference.

73. This cause of action is pled as an alternate basis of liability for Defendants GUYTON and

LESANE's actions and omissions as otherwise related to the first claim for relief.

74. The actions and omissions of Defendants GUYTON and LESANE, in assisting Defendants GOMEZ, SHUSTER and GUY, while in the course of their making an illegal and wrongful seizure of the Plaintiff BATTEN on January 24, 1997, and further their failure to intervene, when they were under a legal obligation to do so, in order to prevent a violation of Plaintiff's constitutional rights, independently caused Plaintiff to suffer significant physical, mental and emotional injury.

75. Further, the actions of Defendants GUYTON and LESANE, where they knew or reasonably should have known, and where any reasonable law enforcement officer would have known, that Plaintiff's Fourth and Fourteenth Amendment rights were being violated at the hands of Defendants GOMEZ, SHUSTER and GUY and where Defendants GUYTON and LESANE possessed a realistic opportunity and legal responsibility to intervene to prevent harm but failed to do so, were in violation of Plaintiff's Fourth and Fourteenth Amendment rights under the United States Constitution.

76. All of the acts complained of herein were done by Defendants GUYTON and LESANE under color, authority and pretenses of the statutes, ordinances, regulations, customs and usages of the State of North Carolina and under the authority of their office, set office being hereinabove set forth.

77. The acts alleged herein were committed by Defendants in a willful, wanton and reckless manner with a deliberate disregard of Plaintiff's Constitutional rights and specifically her right to be secure against unreasonable seizures as set forth in the Fourth and Fourteenth Amendments to the United States Constitution.

78. As a direct and proximate result of the foregoing acts and conduct of Defendants' GUYTON and LESANE, Plaintiff BATTEN suffered serious physical and mental anguish, injury and trauma and loss of income.

79. Any reasonable officer would have known that Defendants' acts and omissions in this case violated clearly established Constitutional rights of the Plaintiff under the Fourth Amendment as incorporated by the Fourteenth Amendment.

VII. FOURTH CLAIM OF RELIEF

(Alternate 42 U.S.C. 1983 Claim Against Defendants LESANE and GUYTON, in their individual capacities only, for failure to intervene to protect Plaintiff LANGDON against unreasonable seizure)

80. The allegations in Paragraphs 1-71 are incorporated herein by reference. This cause of action is pled as an alternate basis of liability for Defendants LESANE and GUYTON's actions and omissions as otherwise related to the Second Claim for Relief.

81. The actions and omissions of Defendants LESANE and GUYTON, in assisting Defendants GOMEZ, SHUSTER and GUY, while in the course of their making an illegal and wrongful seizure of the Plaintiff LANGDON on January 24, 1997, and further their failure to intervene, when they were under a legal obligation to do so, in order to prevent a violation of Plaintiff's constitutional rights, independently caused Plaintiff to suffer significant physical, mental and emotional injury.

82. Further, the actions of Defendants LESANE and GUYTON, where they knew or reasonably should have known, and where any reasonable law enforcement officer would have known, that Plaintiff's Fourth and Fourteenth Amendment rights were being violated at the hands of Defendants GOMEZ, SHUSTER and GUY and had a realistic opportunity and legal responsibility to intervene to prevent harm but failed to do so, were in violation of Plaintiff's Fourth and Fourteenth Amendment rights under the United States Constitution.

83. All of the acts complained of herein were done by Defendants LESANE and GUYTON under color, authority and pretenses of the statutes, ordinances, regulations, customs and usages of the State of North Carolina and under the authority of their office, said office being hereinabove set forth.

84. The acts alleged herein were committed by Defendants in a willful, wanton and reckless manner with a deliberate disregard of Plaintiff's Constitutional rights and specifically her right to be

secure against unreasonable seizures as set forth in the Fourth and Fourteenth Amendments to the United States Constitution.

85. As a direct and proximate result of the foregoing acts and conduct of Defendants LESANE and GUYTON, Plaintiff LANGDON suffered serious mental and physical anguish, injury and trauma.

86. Any reasonable law enforcement would have known that Defendants' acts and omissions in this case violated clearly established Constitutional rights of the Plaintiff under the Fourth Amendment as incorporated by the Fourteenth Amendment.

VIII. FIFTH CLAIM FOR RELIEF

(42 U.S.C. 1983 Claim for Violation of Plaintiff BATTEN's Fourteenth Amendment rights under the Due Process Clause Against All Defendants, in their individual capacities)

87. The allegations of Paragraphs 1-65 are incorporated herein by reference.

88. Defendants, acting under color of the authority vested in them by the State of North Carolina and the State of California, respectively, seized, arrested and transported Plaintiff BATTEN from North Carolina to California without legal authority or jurisdiction under the laws of the United States, North Carolina or California, without any order or any judicial authority to do so and without affording Plaintiff BATTEN any of the procedural safeguards

provided by Article 37 of Chapter 15A of the General Statutes of North Carolina and, therefore, without due process of law in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1983.

89. This claim is predicated upon a violation of procedural due process.

90. Any reasonable law enforcement officer would have known Defendants' acts in this case violated clearly established Constitutional rights of the Plaintiff under the Fourteenth Amendment.

91. As a direct and proximate cause of the foregoing acts and conduct of the Defendants GOMEZ, SHUSTER, GUY, GUYTON and LESANE, Plaintiff BATTEN suffered serious physical and mental anguish, humiliation, injury and trauma and loss of income.

VIII. SIXTH CLAIM FOR RELIEF

(42 U.S.C. § 1983 Claim for Violation of Plaintiff LANGDON' Fourteenth Amendment rights under the Due Process Clause Against All Defendants in their individual capacities)

92. The allegations in Paragraphs 1-71 are incorporated herein by reference.

93. Defendants, acting under color of the authority vested in them by the State of North Carolina and the State of California, respectively, seized, arrested and transported Plaintiff LANGDON from

North Carolina to California without legal authority or jurisdiction under the laws of the United States, North Carolina or California, without any order or any judicial authority to do so, and without affording Plaintiff LANGDON any of the procedural safeguards provided by Article 37 of Chapter 15A of the General Statutes of North Carolina and, therefore, without due process of law in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

94. This claim is predicated upon a violation of procedural due process.

95. Any reasonable law enforcement officer would have known that Defendants' acts in this case violated clearly established Constitutional rights of the Plaintiff under the Fourteenth Amendment.

96. As a direct and proximate result of the foregoing acts and conduct of the Defendants GOMEZ, SHUSTER, GUY, GUYTON and LESANE, Plaintiff LANGDON suffered serious mental and physical anguish, humiliation, injury and trauma.

IX. SEVENTH CLAIM FOR RELIEF

(Alternate 42 U.S.C. § 1983 Claim Against Defendants GUYTON and LESANE, in their individual capacities, for failure to intervene to protect Plaintiff BATTEN'S Fourteenth Amendment Right to Due Process of the Law)

97. The allegations in Paragraphs 1-62, 72-79 and 87-91 are incorporated herein by reference. This

cause of action is pled as an alternate basis of liability for Defendants GUYTON and LESANE's actions and omissions as otherwise related to the Fifth Claim for Relief.

98. The actions of Defendants GUYTON and LESANE, where they knew or reasonably should have known, and where a reasonable officer would have known, that the seizure, arrest and interstate transport of Plaintiff BATTEN at the hands of Defendants GOMEZ, SHUSTER and GUY were in violation of the Constitution and where Defendants GUYTON and LESANE possessed a realistic opportunity and responsibility to intervene to prevent harm but failed to do so, were in violation of Plaintiff BATTEN's Fourteenth Amendment rights to procedural due process of law under the United States Constitution.

99. Any reasonable law enforcement officer would have known Defendants GUYTON and LESANE's acts and omissions in this case violated clearly established constitutional rights of the Plaintiff under the Fourteenth Amendment Due Process Clause.

100. As a direct and proximate result of the foregoing acts and conduct of Defendants GUYTON and LESANE, Plaintiff BATTEN suffered serious physical and mental anguish, injury and trauma and loss of income.

X. EIGHTH CLAIM FOR RELIEF

(Alternate 42 U.S.C. § 1983 Claim Against Defendants GUYTON and LESANE, in their individual capacities, for failure to intervene to protect Plaintiff LANGDON' Fourteenth Amendment Right to Due Process of the Law)

101. The allegations in Paragraphs 1-71, 80-86 and 92 -96 are incorporated herein by reference. This cause of action is pled as an alternate basis of liability for Defendants GUYTON and LESANE's actions and omissions as otherwise related to the Sixth Claim for Relief.

102. The actions of Defendants GUYTON and LESANE, where they knew or reasonably should have known, and where a reasonable officer would have known, that the seizure, arrest and interstate transport of Plaintiff LANGDON at the hands of Defendants GOMEZ, SHUSTER and GUY were in violation of the Constitution and where Defendant LESANE possessed a realistic opportunity and responsibility to intervene to prevent harm but failed to do so, were in violation of Plaintiff LANGDON's Fourteenth Amendment rights to procedural due process of law under the United States Constitution.

103. As a direct and proximate result of the foregoing inactions by Defendants GUYTON and LESANE, Plaintiff LANGDON suffered serious mental and physical anguish, injury and trauma.

104. Any reasonable officer would have known Defendants GUYTON and LESANE's acts and omissions in this case violated clearly established Constitutional rights of the Plaintiff under the Fourteenth Amendment Due Process Clause.

XI. NINTH CLAIM FOR RELIEF

(42 U.S.C. § 1983 Claim Against All Defendants, in their individual capacities, for violation of Plaintiffs' rights to liberty and familial association under the Fourteenth Amendment)

105. The allegations in Paragraphs 1-71 are incorporated herein by reference.

106. The actions of Defendants GOMEZ, SHUSTER, GUY, GUYTON and LESANE, in seizing Plaintiff LANGDON from school and subsequently illegally transferring her to the State of California, all the while separating her from Plaintiff BATTEN, who likewise was illegally seized and transported interstate, all in violation of federal law as well as the laws of the States of North Carolina and California, specifically but not limited to, the Uniform Child Custody Jurisdiction Act, N.C. Gen. Stat. § 50A, and the Parental Kidnaping Prevention Act, 28 U.S.C. § 1738A, constituted a violation of Plaintiff BATTEN's constitutional rights to liberty and familial association guaranteed by the Fourteenth Amendment to the United States Constitution.

107. Any reasonable law enforcement officer would have known Defendants' conduct violated clearly established constitutional rights of the Plaintiffs under the Fourteenth Amendment.

108. As a direct and proximate result of the foregoing wrongful actions of Defendants, Plaintiffs have suffered significant physical, mental and emotional damages with Plaintiff BATTEN also suffering loss of income.

XII. TENTH CAUSE OF ACTION

(Alternate 42 U.S.C. § 1983 Claim Against Defendants GUYTON and LESANE, in their individual capacities, for failure to intervene to protect Plaintiffs' Fourteenth Amendment rights to liberty and familial association)

109. The allegations in Paragraphs 1-71 and 105-108 are incorporated by reference. This cause of action is pled as an alternate basis of liability for Defendant GUYTON's and LESANE's actions and omissions as otherwise related to the Ninth Claim for Relief.

110. The actions of Defendants GUYTON and LESANE, respectively, where they knew or reasonably should have known, and where a reasonable law enforcement officer would have known, the actions of Defendants SHUSTER, GOMEZ and GUY in seizing, separating and transferring Plaintiffs from the State of North Carolina to the State of California were illegal, done in violation of federal law as well as statutory laws of the State of North Carolina and California,

including the Uniform Child Custody Jurisdiction Act, N.C. Gen. Stat. Chapter 50A and the Parental Kidnaping Prevention Act of 1980, 28 U.S.C. § 1738A, amounted to a violation of Plaintiffs' Fourteenth Amendment rights to liberty and familial association. Defendants possessed a realistic and legal opportunity to intervene to prevent such harm but failed to do so, and Defendants, therefore, are in violation of Plaintiff's Fourteenth Amendment rights under the United States Constitution.

111. Any reasonable officer would have known Defendants' actions or omissions in this case violated clearly established constitutional rights of the Plaintiffs under the Fourteenth Amendment.

112. As a direct and proximate result of the foregoing wrongful actions and inactions of Defendants, Plaintiffs suffered significant physical, mental and emotional damage with Plaintiff BATTEN also suffering loss of income.

XIII. ELEVENTH CAUSE OF ACTION

(State Cause of Action for False Imprisonment Against All Defendants, in their individual and official capacities, on behalf of Plaintiff BATTEN)

113. The allegations in Paragraphs 1-65 are incorporated herein by reference.

114. Defendants' actions, including their seizure of Plaintiff BATTEN by words, omissions and actions, without the voluntary, intelligent and

informed consent of Plaintiff BATTEN and without privilege of law, constituted a false imprisonment of Plaintiff BATTEN subjecting her to significant mental pain, suffering and anguish and loss of income.

XIV. TWELFTH CAUSE OF ACTION

(State Cause of Action for False Imprisonment Against All Defendants, in their individual and official capacities, on behalf of Plaintiff LANGDON)

115. The allegations in Paragraphs 1-71 are incorporated herein by reference.

116. Defendant's actions, including their seizure of Plaintiff LANGDON by words, omissions and actions, without the voluntary, intelligent and informed consent of Plaintiff LANGDON or her mother, Plaintiff BATTEN, and without privilege of law, constituted a false imprisonment of Plaintiff LANGDON subjecting her to significant mental pain, suffering and anguish.

XV. THIRTEENTH CAUSE OF ACTION

(State Cause of Action on Behalf of Plaintiff BATTEN Against All Defendants in Their Individual and Official Capacities, for Intentional or, Alternatively, Negligent Infliction of Emotional Distress)

117. The allegations in Paragraphs 1-116 are incorporated herein by reference.

118. Defendants, by the above actions or omissions as set forth in this Complaint, engaged in extreme and outrageous conduct against Plaintiff BATTEN, which was intended to and did cause severe emotional distress to her. These actions were so shocking and outrageous that it exceeded all reasonable bounds of decency.

119. Alternatively, Defendants actions and omissions proximately caused severe emotional distress to Plaintiff BATTEN which she suffered and continues to suffer today.

120. It was reasonably foreseeable that such conduct would have resulted in the emotional distress Plaintiff BATTEN suffered and now suffers.

121. As a direct and proximate result of Defendants' actions, Plaintiff BATTEN suffered and continues to suffer severe physical, mental and emotional damage with Plaintiff BATTEN also suffering loss of income.

XVI. FOURTEENTH CLAIM FOR RELIEF

(State Cause of Action on Behalf of Plaintiff LANGDON Against All Defendants in Their Individual and Official Capacities, for Intentional or, Alternatively, Negligent Infliction of Emotional Distress)

122. The allegations of Paragraphs 1-116 are incorporated herein by reference.

123. Defendants, by the above actions or omissions as set forth in this Complaint, engaged in extreme and outrageous conduct against Plaintiff LANGDON, which was intended to and did cause severe emotional distress to her. These actions were so shocking and outrageous that it exceeded all reasonable bounds of decency.

124. Alternatively, Defendants actions and omissions proximately caused severe emotional distress to Plaintiff LANGDON which she suffered and continues to suffer today.

125. It was reasonably foreseeable that such conduct would have resulted in the emotional distress Plaintiff LANGDON suffered and now suffers.

126. As a direct and proximate result of Defendants' actions, Plaintiff LANGDON suffered and continues to suffer severe physical, mental and emotional damage.

WHEREFORE, Plaintiffs BATTEN and LANGDON, pray the Court for relief as follows:

1. For the First Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

2. For the Second Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

3. For the Third Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

4. For the Fourth Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

5. For the Fifth Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

6. For the Sixth Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

7. For the Seventh Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

8. For the Eight Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

9. For the Ninth Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

10. For the Tenth Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

11. For the Eleventh Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

12. For the Twelfth Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

13. For the Thirteenth Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

14. For the Fourteenth Claim for Relief, sum in excess of $10,000 for compensatory damages and a sum in excess of $10,000 for punitive damages;

15. The cost of this action, including a reasonable attorney's fee;

16. A trial by jury on all issues in this case is hereby demanded;

17. For such other and further relief as the Court deems just and proper.

RESPECTFULLY, submitted this ____ day of December, 1999.

BEAVER, HOLT, RICHARDSON, STERNLICHT
BURGE & GLAZIER, P.A.

BY: /s/________________________________
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NCSBN: 5503

BY: /s/________________________________
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November 19, 1999

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RE: Batten, et al., v. Guy, et al.
Case No. 7-99-CV-198-F1

Dear Sirs:

Enclosed please find copies of Plaintiffs' Motion to Amend Complaint and Incorporated Memorandum of Law, the proposed Order and the proposed Amended Complaint. As soon as the Order is entered, we will send you a filed copy of both the Order and the Amended Complaint. If you have any questions, please feel free to contact my office. Thank you.

Sincerely,

H. Gerald Beaver
HGB:hnl
Enclosures

November 19, 1999

David W. Daniel
Clerk for the Eastern District of North Carolina
P.O. Box 25670
Raleigh, NC 27611

RE: Batten, et al. v. Guy, et al.
Case No. 7-99-CV-198-F1

Dear Mr. Daniel:

Enclosed please find Plaintiffs' Motion to Amend Complaint with Incorporated Memorandum of Law, our proposed Order and an attached copy of our proposed Amended Complaint. Please file and enter the Motion and Order and send a file stamped copy of each back to our office in the enclosed self addressed stamped envelope. Thank you so much for your assistance in this matter. If you have any questions or concerns, please feel free to call our office.

Sincerely,

H. Gerald Beaver

HGB:hnl

Enclosures